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TRANSCRIPT OF RECORD

United States Court Of Appeals

TENTH CIRCUIT

No. 5309

THE PHILLIPS PETROLEUM COMPANY, a corporation,
Appellant,

vs.

MAYOE PORTER BUSTER, Appellee.

No. 5310

THE PHILLIPS PETROLEUM COMPANY, a corporation,
Appellant,

vs.

H. C. HITCH, JR., et al., Appellees.

No. 5311

THE PHILLIPS PETROLEUM COMPANY, a corporation,
Appellant,

vs.

HENRY C. HITCH et al., Appellees.

No. 5312

THE PHILLIPS PETROLEUM COMPANY, a corporation,
Appellant,

vs.

THE HITCH LAND AND CATTLE COMPANY, a corporation,
et al., Appellees.

Appeals From The United States District Court
For The Western District Of Oklahoma.

Filed January 9, 1956.

United States Court Of Appeals

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IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 5309.

PHILLIPS PETROLEUM COMPANY, a corporation,
Appellant,

vs.

MAYOE PORTER BUSTER AND ROBERT W. BUSTER,
Appellees.

Statement By Appellant Of Points
On Which It Intends To Rely.

Appellant, Phillips Petroleum Company, defendant below, states that the points on which it intends to rely on appeal in this action are as follows:

1. The findings of fact and conclusions of law to the effect that appellees have no adequate remedy at law; that an attempted recovery of damages at law by appellees would require a multiplicity of actions and would be burdensome on the court and the parties; that appellees would suffer irreparable injury unless equitable relief is granted and that equitable relief is granted and that equitable relief is just and proper, and required by equity and good conscience, are unsupported by and in conflict with the evidence and are contrary to law.

2. The judgment violates Rule 65(d) of the Rules of Civil Procedure and is otherwise invalid and must be reversed for the reason that it does not describe in reasonable detail the act or acts sought to be enjoined and is so indefinite and uncertain that appellant cannot know with reasonable certainty whether it is in compliance with or in violation of the injunction.

3. The judgment is invalid and must be reversed for the reason that it absolutely and perpetually enjoins appellant from disconnecting appellees' gas lines from appellant's producing gas well and binds appellant to permit the use and

purchase of gas by the appellees without enjoining upon appellees any obligation in connection therewith.

4. The findings of fact and conclusions of law to the effect that Dale Lewis was authorized on behalf of appellant to make the representations, agreements and commitments which the court found that he made and that appellant held the said Dale Lewis out and made it appear to appellees and farmers generally in the vicinity that the said Dale Lewis had such authority are unsupported by and in conflict with the evidence and are contrary to law.

5. The findings of fact and conclusions of law to the effect that Dale Lewis in December 1952 or at any other time represented to, promised and agreed with appellees that if appellees completed the drilling and equipping of an irrigation well on their land appellant would provide natural gas in an amount reasonably necessary for the operation of said well; that until July 1953 it was the general custom, practice and policy of appellant and other companies having producing gas wells in the vicinity to permit the use and purchase of natural gas at reasonable prices and in such amounts as are reasonably necessary for irrigation purposes; that appellees completed and equipped such irrigation well in reliance upon said representation, promise and agreement and upon said custom, practice and policy; and that appellant had notice and knowledge that the completion and equipping of said well was done in reliance upon said representation, promise and agreement and upon said custom, practice and policy are unsupported by and in conflict with the evidence and are contrary to law.

6. The court erred in taking into consideration any so-called custom, practice or policy of appellant and other companies to furnish gas for irrigation.

7. The conclusion of law to the effect that appellant by reason of its conduct, representation, promise and agreement is obligated to permit the use and purchase by appellees of gas at a reasonable price, during the continuance of irrigation on appellees' land, of such amount of natural gas as is reasonably necessary for such purpose and that appellees are obligated to make any such purchase from the appellant are unsupported by and in conflict with the evidence and are contrary to law.

8. The conclusion of law that appellant is estopped to deny or repudiate the existence of an obligation to furnish gas to appellees is contrary to law.

9. The representations, promises and agreement which the court found Dale Lewis to have made are too indefinite and uncertain, lack mutuality, and are otherwise insufficient to constitute a binding and enforcible agreement or obligation and constitute no basis for the relief granted herein.

10. The representations, promises and agreement upon which the judgment is based on unenforcible by reason of the statute of frauds.

11. The conclusion of law that appellant is estopped and that it would be inequitable to assert the statute of frauds as a defense in this case is contrary to law.

12. The undisputed evidence discloses that any obligation which appellant might have had to furnish or permit the use of gas for irrigation was terminated prior to the bringing of this action.

13. The undisputed evidence discloses that the gas which the judgment requires appellant to furnish to appellees had theretofore been dedicated and sold to Panhandle Eastern Pipe Line Company for the life of production and that appellant is without right to so furnish or permit the use of such gas by appellees.

14. The finding of fact that the pipe line purchaser from appellant has expressed its consent and approval of the use of the gas for irrigation purposes is unsupported by and is contrary to the evidence.

15. The findings of fact to the effect that the reasonable amount of natural gas used and purchased from the Mayoe well in 1953 and 1954 for the operation of appellees' irrigation well amounted to approximately 13,090 cubic feet per day; that about 1,963,500 cubic feet of gas were reasonably used and necessary for the annual irrigation operations; and that less than two per cent of the allowable production of the well was used for irrigation are unsupported by and are contrary to the evidence.

16. The finding of fact to the effect that the natural gas produced on appellees' land at a reasonable price is the only fuel whose use would permit irrigation on the land with reasonable assurance of profit is unsupported by and is contrary to the evidence.

17. There is no basis in law or fact for imposing any obligation on the part of appellant to furnish gas to or permit the use thereof by appellees for irrigation purposes.

18. The judgment requiring appellant to furnish gas to or permit the use thereof by appellees for irrigation purposes is unsupported by the evidence.

19. The judgment requiring the appellant to furnish gas to or permit the use thereof by appellees for irrigation purposes is contrary to law.

Dated this 9th day of January, 1956.

Rayburn L. Foster
Harry D. Turner
R. M. Williams
Kenneth Heady
James G. Williams, Jr.
Cecil C. Hamilton
Attorneys for Appellant

Filed Jan. 12, 1956.

Phillips Petroleum Co. vs. Buster et al.

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA.

Pleas And Proceedings Before The Honorable Edgar S. Vaught, Judge Of The United States District For The Western District Of Oklahoma, and The Honorable W. R. Wallace Judge of the Northern, Eastern and Western Districts of Oklahoma, for the United States District Court Presiding In The Following Entitled Cause:

MAYOE PORTER BUSTER, Plaintiff,

vs.

THE PHILLIPS PETROLEUM COMPANY, a corporation, its agents, servants and all persons acting by and under its authority and A. M. RIPPEL, Defendants.

No. 6015, Civil.

1] [Petition Of Phillips Petroleum Company, A Corporation, For The Removal.]

Comes now Phillips Petroleum Company, a corporation, one of the defendants in this cause, and files this its Petition for the Removal of This Cause from the District Court in and for Texas County, State of Oklahoma, in which court said cause is now pending, to the United States District Court for the Western District of Oklahoma. As grounds for said Removal, Petitioner alleges and states:

1. That this cause was filed in the District Court in and for Texas County, State of Oklahoma, said cause being No. 9309 on the docket of said court, on August 24, 1953; that the summons was served in said cause on this defendant on August 25, 1953; that a copy of Plaintiff's petition in said cause was received by this defendant on August 31, 1953, after such copy had been requested by this defendant from the Clerk of the District Court within and for Texas County, State of Oklahoma, but that no copy of said petition has yet been formally served on this defendant; and that this Petition for Removal is filed

within the time specified in Sec. 1446 (b) of Title 28 of the U. S. Code.

2. That the Plaintiff, Mayoe Porter Buster, was at the time of the filing of the petition in this cause and still is a citizen and resident of the State of Oklahoma.

3. That the Defendant, Phillips Petroleum Company, was at the time of the filing of the petition in this cause and still is a noncitizen and nonresident of the State of Oklahoma, and was at the time of the filing of the petition in this cause and still is a corporation organized, created and existing under and by virtue of the laws of the State of Delaware, and it was and is a citizen and resident of the State of Delaware.

4. That the Defendant, A. M. Rippel was at the time of the filing of the petition in this cause and still is a citizen and resident of the State of Oklahoma.

2] 5. That said cause is a controversy of a civil nature and the matter in controversy in said cause exceeds the sum or value of $3,000, exclusive of interests and costs; that the plaintiff in said cause sues for a perpetual injunction restraining the defendants from severing the connection between the natural gas well owned and operated by the Defendant, Phillips Petroleum Company located upon the NE/4 of Section 28, Township 2 N., Range 15 E.C.M., Texas County, Oklahoma, and the irrigation water well owned and operated by the Plaintiff on the same land, all of which more fully appears by Plaintiff's petition in said cause.

6. That notwithstanding the joinder of A. M. Rippel as a Defendant, said cause is a controversy which is wholly between the citizens of different states in that the Plaintiff and the Defendant, Phillips Petroleum Company, are the sole and only parties interested in said controversy and that the Defendant, A. M. Rippel is not a necessary or proper party to this action but instead is a mere nominal party; that said A. M. Rippel is an employee of and the Manager of the Natural Gas Department of the Defendant, Phillips Petroleum Company, and has no interest in this controversy or in the alleged contract referred to in the petition filed in this action other than as such employee.

7. That the Defendant, A. M. Rippel was improperly and fraudulently joined as a Defendant in this action for the sole purpose of fraudulently and improperly preventing Petitioner from removing this cause from the District Court in and for Texas County, State of Oklahoma, to the United States District Court for the Western District of Oklahoma, as prayed for herein, and for no other purpose, and Plaintiff well knew at the time of bringing this action that said Defendant, A. M. Rippel, was not and would not be a party to the alleged contract referred to in the Petition filed in said cause, that said Defendant, A. M. Rippel did not and would not have any personal liability thereon, that said Defendant A. M. Rippel was at all times and would be at all times acting solely in his capacity as Manager of the Natural Gas Department of the Defendant, Phillips Petroleum Company, that said Defendant, A. M. Rippel did not have and would not have any personal contractual relations with the Plaintiff, that said Defendant, A. M. Rippel, individually, did not at the time of the filing of said Petition and does not now have any right to produce or take gas from the gas well of the Defendant, Phillips Petroleum Company, described in the petition filed herein and that said Defendant, A. M. Rippel, individually, did not at the time of the filing of said petition and does not now have any right to permit the Plaintiff herein to take and use gas from said gas well, but Plaintiff with this knowledge joined the said A. M. Rippel herein solely to prevent the removal of this cause and not in good faith.

3] 8. That the Defendant, Phillips Petroleum Company, files herewith its bond with good and sufficient surety, conditioned that said Defendant will pay all costs and disbursements incurred by reason of these removal proceedings should it be determined that this cause was not removable or was improperly removed.

9. That there is attached to this petition and made a part hereof by reference for all purposes, a copy of all proceedings, pleadings, and orders served on the Defendant Phillips Petroleum Company, in the action of Plaintiff against the Defendants in the District Court in and for Texas County, State of Oklahoma.

Wherefore, the Petitioner, Phillips Petroleum Company, prays that this Court, the said United States District Court

for the Western District of Oklahoma, approve the removal bond filed with this Petition for Removal and take jurisdiction of said suit as one properly removed to and pending in this Court.

Respectfully submitted.

Harry D. Turner
R. M. Williams
Kenneth Heady
Cecil C. Hamilton
Attorneys for Defendant
Phillips Petroleum Company

[Verified.]
Filed Sept. 10, 1953.

5] State Of Oklahoma County Of Texas, SS In The District Court In And For Said County And State. Mayoe Porter Buster, Plaintiff -vs- The Phillips Petroleum Company, A Corporation, its agents, servants and all persons acting by and under its authority and A. M. Rippel, Defendants, Case No. 9309.

Petition.

Comes now the Plaintiff, Mayoe Porter Buster, and for her cause of action against the Defendants, the Phillips Petroleum Company, a Corporation, its agents, servants and all persons acting by or under its authority and A. M. Rippel, alleges and states:

That the Plaintiff is a resident of Texas County, Oklahoma, whose postoffice address is Guymon, Oklahoma.

That the Defendant, the Phillips Petroleum Company is a Corporation duly organized and existing under and by virtue of the laws of the State of Delaware and is duly domesticated and authorized to do business in the State of Oklahoma, and that the said Defendant, Phillips Petroleum Company, as a Corporation, is generally engaged in the production of natural gas off and from a large acreage in the southeastern section of Texas County, Oklahoma, and that the Defendant, A. M. Rippel,

is the manager of the natural gas department of the said Defendant, Phillips Petroleum Company, a Corporation.

That the Plaintiff is the owner in fee simple of the Northeast Quarter (NE/4) of Section Twenty-eight (28), Township Two (2) North, Range Fifteen (15) E.C.M., Texas County, Oklahoma, this Plaintiff owning all the oil, gas and other mineral rights under said land and being entitled to receive one-fourth of the one-eighth royalty accruing off the gas well as owned and operated by the Defendant, the Phillips Petroleum Company, on unitized Section Twenty-eight (28), Township Two (2) North, Range Fifteen (15) E.C.M. Texas County, Oklahoma, such gas well being located on the above described real estate as owned by the Plaintiff.

6] That the Defendant, the Phillips Petroleum Company, holds oil and gas leases on all of Section Twenty-eight (28), Township Two (2) North, Range Fifteen (15) E.C.M., Texas County, Oklahoma, and for the past several years has had a producing gas well located on said section, all of which has been consolidated for natural gas production purposes, such well being located on the premises owned by this Plaintiff, and being the only gas well that the said Phillips Petroleum Company is authorized to drill upon said entire section, under the rules and regulations of the Corporation Commission of the State of Oklahoma.

That sometime during the latter part of the year of 1952 the Plaintiff herein decided to drill an irrigation well upon the above described real estate as owned by her, provided it were possible to obtain gas for fuel to operate the pump on said irrigation well from the gas well owned by the Defendant, Phillips Petroleum Company, on said section; that in pursuance to said plan, the Plaintiff herein and her husband, Robert W. Buster, consulted with the proper and competent officials of the Phillips Petroleum Company, a Corporation, and especially with one Dale Lewis, Field Superintendent for said Phillips Petroleum Company, for the purpose of determining whether or not natural gas would be avialble from the gas well owned by Phillips Petroleum Company and located on said tract belonging to the Plaintiff for use as power in operating the pump on said proposed irrigation well; that this Plaintiff was then assured by the said Dale Lewis, Field Superintendent for the Phillips Petroleum Company, that natural gas would be available for use

as fuel in generating power for the operation of the pump on such proposed irrigation well, and Plaintiff was further assured that at the proper time the Phillips Petroleum Company would connect the irrigation well with the gas well located on said tract.

7] That relying upon this assurance from authorized and competent officials of the Phillips Petroleum Company, the Plaintiff herein proceeded to drill and equip said irrigation well at a total expense of approximately $17,000.00; that during the time such well was being drilled, the Plaintiff and her husband, Robert W. Buster, at various times discussed the matter of connecting said irrigation well with the gas well located on said tract with authorized officials of the Phillips Petroleum Company and the Plaintiff was at all times assured that as quickly as said irrigation well was completed the Phillips Petroleum Company would connect said well with the gas well located on said tract, and that Plaintiff would have the right to purchase and take gas from said gas well for use as fuel in powering the engine on said irrigation well at the going and established field price for natural gas in the Texas County area of the Guymon-Hugoton Gas Field, which said going price is now approximately 9.82¢ per thousand cubic feet, which price the Plaintiff is ready, willing and able to pay.

Plaintiff further alleges that said irrigation well was completed on or about January 15, 1953, and that as previously agreed upon the said Defendant, Phillips Petroleum Company, acting through its duly authorized agents and servants, did connect its gas well located on said tract, as above described, with the irrigation well also located thereon and belonging to this Plaintiff, and that the Plaintiff has at all times since been using gas from the gas well of said Defendant, Phillips Petroleum Company, for the use as intended and as agreed upon in furnishing fuel to power the engine in pumping water from said irrigation well.

Plaintiffs further alleges that after said irrigation well was completed and connected up with the said gas well, the Defendant, Phillips Petroleum Company, acting through its Field Superintendent, Dale Lewis, agreed to furnish the Plaintiff a written agreement covering the terms and conditions of the oral understanding as previously had, and that

during the month of May, 1953, such agreement was furnished to the Plaintiff which she duly executed and forwarded to the said Defendant, Phillips Petroleum Company, together with a check for $100.00 to cover meter service, which said contract and check were returned unsigned to the Plaintiff with a letter stating that the Phillips Petroleum Company had changed its policy and was no longer going to sell gas to royalty owners unders it lease for irrigations purposes.

8] The Plaintiff further alleges that sometime shortly after July 23, 1953, she received a letter from the Defendant, A. M. Rippel, manager of the natural gas department of the Phillips Petroleum Company, advising her that unless she voluntarily severed the connection between the irrigation well and the gas well of the Defendant on or before September 1, 1953, the said Defendant, Phillips Petroleum Company would without further notice disconnect the same; a copy of said letter being hereto attached, marked "Exhibit A," and by reference made a part hereof.

Plaintiff further alleges that the statement in said letter that the previous connection was made without the knowledge or consent of the Phillips Petroleum Company is entirely and completely false as the officials and employees of the said Phillips Petroleum Company actually supervised the making of the gas connection at the time the irrigation well was connected with the gas well.

Plaintiff further alleges that had she not had the assurance of authorized and competent officials of the Defendant, Phillips Petroleum Company, that natural gas would be available from said gas well for use as fuel in furnishing power for the pump on the irrigation well, she would not have incurred the expense of approximately $17,000.00 in drilling and equipping said irrigation well, and that the Plaintiff specifically alleges that in incurring such expenditure and in drilling and equipping such irrigation well she relied upon the oral promises and agreements of authorized and competent officials of the Phillips Petroleum Company that such natural gas would be available from said gas well for use by the Plaintiff, in the operation of said irrigation well.

9] That Plaintiff herein, in good faith, relied upon the contract and promises of said Phillips Petroleum Company

and was thereby led to change her position for the worse in the event said natural gas is not available as agreed upon, and that the Defendants herein are now equitably estopped from taking the action as threatened in the letter attached hereto and marked "Exhibit A," as such threatened act, if permitted to be performed by said Defendants, would be in violation of the oral assurances as given by the Defendant to the Plaintiff herein and would be wholly illegal and would work great and irreparable damage to this Plaintiff, and that the Plaintiff has no adequate remedy at law.

Wherefore, Plaintiff prays for a judgment against all of the above named Defendants perpetually enjoining and restraining them from severing the connection between the gas well as owned by the Defendants as located on the above described tract belonging to the Plaintiff with the irrigation well as owned by the Plaintiff thereon, and that said Defendants be perpetually enjoined and restrained from molesting or disturbing the present connection as now existing between said gas well and said irrigation well, and Plaintiff prays for all other proper and equitable relief and for her costs.

Plaintiff further alleges that unless the said Defendants, the Phillips Petroleum Company, a Corporation, its agents, servants and all persons acting by or under its authority and A. M. Rippel, are forthwith and without notice enjoined and restrained from doing the said threatened unlawful act, the said Plaintiff will suffer irreparable damage and injury, and that therefore Plaintiff prays that a temporary restraining order against the said Defendants be granted forthwith.

Mayoe Porter Buster
Tryon & Sweet
Her Attorneys

[Verified.]

12] Exhibit A.

Phillips Petroleum Company
Bartlesville, Oklahoma
July 23,1953

Registered Mail

Phillips Petroleum Co. vs. Buster et al.

Mr. R. W. Buster, Guymon, Oklahoma

Dear Sir: Our attention has been called to the fact that you are connected with and are taking gas from our Mayoe Well in Section 28-2N-15E, Texas County, Oklahoma, for irrigation purposes on said land. Such connection was without our knowledge or consent and your taking of such gas is without right.

To avoid unnecessary hardship on your part due to an immediate loss of a fuel supply, we will defer taking action until September 1, 1953, but will expect you not later than such date to voluntarily sever such connection, and failing to do so, we will, without further notice, disconnect the same. We will at that time estimate the volume of gas so taken and bill you therefor.

Yours very truly,
Phillips Petroleum Company
By A. M. Rippel

AMR:bjj

16] Jurisdictional Statement.

This action was commenced in the District Court of Texas County, Oklahoma, on the 24th day of August, 1953. Summons was served upon the statutory service agent for the defendant Phillips Petroleum Company on the 25th day of August, 1953. By the summons the defendant Phillips Petroleum Company was required to plead in the State court on or before the 28th day of September, 1953. Petition for Removal, Notice of Removal, and Bond for Removal were filed in the District Court of the United States for the Western District of Oklahoma on the 10th day of September, 1953.

Rayburn L. Foster
Harry D. Turner
R. M. Williams
Kenneth Heady
Cecil C. Hamilton
Attorneys for Defendant Phillips Petroleum Company

Filed Dec. 29, 1955.

Phillips Petroleum Co. vs. Buster et al.

Memorandum Brief Of Defendant Phillips Petroleum Company On Plaintiffs' Motions To Remand

* * * * *

The Evidence Presented at the Hearing

* * * * *

22] The witness Ramstad testified with regard to the value of the gas used annually by the plaintiffs, the cost of using substitute fuels, and the cost of converting to the use of substitute fuels. These costs to the plaintiffs are shown in defendant's Exhibit 1, a copy of which is attached to this brief as Appendix A. In this connection, it was stipulated between plaintiffs and defendant that the "Timmons" well is the gas well involved in Case No. 6018, the "Mayoe" well is the gas well involved in Case No. 6015, the "Knott" well is the gas well involved in Case No. 6016, the "Place" well is the gas well involved in Case No. 6017, and that the "Cairo" well is not presently involved in any of these cases. It was also stipulated that the minimum cost of electricity to the plaintiffs would be one cent per kilowatt hour. With respect to the use by plaintiff of gas from Southwest Public Service Company, it was stipulated that Southwest Public Service Company's line runs in a southwesterly direction from Guymon, that plaintiffs' wells lie southeast of Guymon, and that the distance from plaintiffs' wells to Southwest Public Service Company's line is greater than two miles. Rippel testified that the cost of laying pipe line is approximately $2,000 per inch diameter per mile, but that the cost of laying a one-inch line, which would be adequate to meet plaintiffs' needs, might reach $2,300 per mile.

Plaintiffs offered no evidence.

* * * * *

Filed Oct. 5, 1953.

23] Appendix A Defendant's Exhibit 1.

Panhandle Irrigation

Summary of costs for the various water wells involved using the following premises:

1. The involved wells have the following sized motors taking gas from the respective gas wells:

Well	No. Motors	H.P.
Timmons	1	110
Mayoe	1	120
Knott	1	85
Place	2	85 each
Cairo	1	100 (estimated)

(The above information from W. S. Etchieson)

2. For an average year the wells are in continuous operation for 150 days. (This estimate made by Tom Craig from conversation with farmers and irrigation authorities).

3. A gas motor uses 10 cubic feet of gas per B.H.P.Hr., .11 gallons propane per B.H.P. Hr., and .11 gallons butane per B.H.P. Hr.

4. Gasoline motor uses .11 gallons per B.H.P. Hr.

5. Diesel motor uses .055 gallons diesel fuel per B.H.P. Hr.

6. A 100 H.P. electric motor will suffice for the Timmons, Mayoe and Cairo, and 75 H.P. electric motors for the Knott and Place. Electric consumption = .746 KW/HP Hr.

7. Following fuel prices delivered:

Propane - Butane	- 9¢/gallon
Gasoline	-15¢/gallon
Diesel fuel	-13-1/2¢/gallon

8. Assume electric costs = 1¢ per KW Hr. average.

9. Southwest Public Service Gas Rates:

First	10 Mcf	@	45¢ per Mcf
Next	15 Mcf	@	40¢ per Mcf
Next	25 Mcf	@	35¢ per Mcf
Next	50 Mcf	@	30¢ per Mcf
Next	100 Mcf	@	25¢ per Mcf
Next	300 Mcf	@	20¢ per Mcf
Next	500 Mcf	@	17¢ per Mcf
All over 1 M2-cf		@	15¢ per Mcf

24] 10. West Texas Gas Co. Rate #11

First	2 Mcf	@	62-1/2¢ per Mcf
Next	8 Mcf	@	55¢ per Mcf
Next	40 Mcf	@	50¢ per Mcf
Next	50 Mcf	@	45¢ per Mcf
Next	100 Mcf	@	30¢ per Mcf
Next	200 Mcf	@	25¢ per Mcf
Next	300 Mcf	@	23¢ per Mcf
Next	300 Mcf	@	22¢ per Mcf
All over 1 M2-cf		@	21¢ per Mcf

YEARLY FUEL COSTS

Well	No. Motors	H.P. Each	Yearly Cost @ 9.8263¢ Gas	Yearly Cost Using SWPS Gas	Yearly Cost Using West Texas Gas Co. Gas	Yearly Cost Using Propane and Butane	Yearly Cost Using Gasoline	Yearly Cost Using Diesel Fuel	Yearly Cost Using Electricity @ 1¢ per KW Hr.
Timmons	1	110	$390	$845	$1,085	$3,920	$6,535	$2,940	$2,680
			(Cost of Diesel Replacement - $5,000)						
			(Cost of Electric Replacement - $1,500)						
Mayoe	1	120	$425	$905	$1,165	$4,275	$7,125	$3,205	$2,680
			(Cost of Diesel Replacement - $5,000)						
			(Cost of Electric Replacement - $1,500)						
Knott	1	85	$300	$690	$ 885	$3,030	$5,050	$2,270	$2,010
			(Cost of Diesel Replacement - $3,000)						
			(Cost of Electric Replacement - $1,200)						
Place	2	85	$600	$1,380	$1,770	$6,060	$10,100	$4,540	$4,020
			(Cost of Diesel Replacements - $6,000)						
			(Cost of Electric Replacements- $2,400)						
Cairo*	1	100	$355	$785	$1,005	$3,565	$5,940	$2,670	$2,680
			(Cost of Diesel Replacement - $5,000)						
			(Cost of Electric Replacement - $1,500)						

*No H.P. rating on motor.
Estimated to be 100 H.P.

24-A

24-A

25] Clerk's Minutes Overruling Motion Of Plaintiff To Remand - Before Judge Wallace

On this 30th day of October, 1953, it is ordered by the Court that plaintiff's motion to remand, heretofore submitted to the Court for determination, is now overruled, and defendants are granted 10 days in which to answer.

26] Answer And Counterclaim Of Defendant Phillips Petroleum Company.

1. The complaint (petition filed in the District Court in and for Texas County, Oklahoma) fails to state a claim against defendant upon which relief can be granted.

2. Defendant admits that the plaintiff is a resident of Texas County, Oklahoma, and that defendant is a Delaware corporation authorized to do business in the State of Oklahoma; that defendant is engaged in the production of natural gas; and that defendant A. M. Rippel is Manager of the Natural Gas Department of defendant Phillips Petroleum Company.

3. Defendant admits that the plaintiff is the owner of the interest in the property described in the complaint as therein alleged; that defendant is the owner of an oil and gas lease on said property and has drilled a producing gas well thereon; and that plaintiff has drilled an irrigation well located on said property. Defendant is without knowledge or information sufficient to form a belief as to the truth of the plaintiff's averments as to the date said irrigation well was drilled and the amounts expended by plaintiff in drilling said well. Defendant admits that the letter, a copy of which is attached to the complaint as Exhibit A, was sent to the plaintiffs.

4. Defendant specifically denies that any agreement, oral or written, was made and entered into by this defendant or any authorized agent or employee of this defendant whereby defendant agreed to furnish gas to plaintiff or whereby this defendant agreed to enter into a written contract for the furnishing of gas to plaintiff. Defendant further states that neither Dale Lewis, field superintendent for Phillips Petroleum Company, nor any other agent, employee or official of defendant with whom plaintiff may have consulted, had any authority to make

and enter into any contract, oral or written, for the furnishing of gas to plaintiff from defendant's gas well. Defendant admits that Dale Lewis furnished plaintiff with a blank form written agreement pertaining to the furnishing of gas by defendant to plaintiff which was executed and returned by plaintiff to defendant, but that defendant, as alleged in the complaint, declined and refused to enter into such agreement with plaintiffs, returning the same to plaintiff unsigned. Without admitting any such contract was made and in the alternative, defendant further states that if any such agreement to furnish gas was made by Dale Lewis, or any other agent or employee of this defendant, both plaintiff and this defendant, through its agents and employees, contemplated that said agreement would not become effective unless and until said agreement was reduced to writing and executed by an officer of this defendant, and none of these things were done.

27] 5. The alleged contract between plaintiff and this defendant referred to in the complaint is a contract that, by its terms, is not to be performed within one year from the making thereof, and no memorandum of said contract was ever made in writing, and said contract is therefore void under the Oklahoma statute of frauds.

6. The alleged contract between plaintiff and this defendant referred to in the complaint is an agreement for the sale of goods at a price not less than $50.00, and no memorandum of said contract was ever made in writing, and said contract is therefore void under the Oklahoma statute of frauds.

7. Defendant admits that plaintiff has been using natural gas from defendant Phillips Petroleum Company's well, but defendant specifically denies that the connection to said well was made by this defendant Phillips Petroleum Company or by an authorized employee of this defendant.

8. Defendant denies each and all other allegations not herein specifically admitted.

28] Counterclaim

By way of counterclaim defendant alleges that the making

of the connection by plaintiff to the well of this defendant and the taking and using of gas by plaintiff therefrom, as herein alleged by plaintiff, is without legal right and unlawful and that although defendant has demanded of plaintiff that she disconnect said connection and discontinue the taking and use of such gas, as admitted by plaintiff in her complaint, plaintiff has failed and refused to so disconnect said connection and to cease taking and using said gas.

28] Wherefore, defendant Phillips Petroleum Company, having fully answered, prays that plaintiff take nothing by reason of her complaint filed herein but that defendant on its counter-claim herein be granted an injunction against plaintiff enjoining plaintiff from further maintaining her said connection to the well of this defendant and from further taking and using gas therefrom, and for such other and further relief to which the defendant may be entitled.

Harry D. Turner
R. M. Williams
Kenneth Heady
Cecil C. Hamilton
Attorneys for Defendant
Phillips Petroleum Company

Filed Sept. 14, 1953.

34] Reply.

Plaintiff, for his reply to defendants' answer and counter-claim herein, alleges and states as follows:

1. Defendants' answer and counter-claim state no claim upon which any relief may be granted to defendants.

2. Plaintiff denies all of the allegations of defendants' answer and counter-claim inconsistent with the allegations of the complaint on file herein.

3. By reason of the conduct of defendants herein, as alleged in the complaint, which allegations concerning defendants' conduct are incorporated herein, defendants do not come to this Court of conscience with clean hands and,

in equity and good conscience, are not entitled to the equitable relief prayed for in their counter-claim or to any relief.

Wherefore, having fully replied to defendants' answer and counter-claim, plaintiff prays as in his complaint set forth.

V. P. Crowe
Embry, Crowe, Tolbert, Boxley & Johnson
Orlando F. Sweet
Attorneys For Plaintiffs

Filed June 1, 1954.

36]

Amendment To Reply.

Plaintiff, with leave of Court, for amendment to her Reply filed herein, amends her reply by adding thereto paragraph 4:

4. Defendants, by reason of their acts, as alleged in plaintiff's petition, and which allegations are incorporated herein, are estopped to assert the defense of the Statute of Frauds, and by reason of said acts and the circumstances of the parties, defendants, in equity and good conscience, are not entitled to assert the defense of the Statute of Frauds.

Wherefore, having fully replied, plaintiff prays as in her petition set forth.

V. P. Crowe
Embry, Crowe, Tolbert, Boxley & Johnson
Orlando F. Sweet
Attorneys For Plaintiff

Filed Sept. 7, 1954.

39] Opinion.

The above styled cases were filed in the district court of Texas County, Oklahoma, a restraining order was issued and a hearing set for September 14, 1953. On September 10, 1953 they were removed to this court on motion of the defendant, Phillips Petroleum Company, (hereinafter referred to as Phillips.) The cases were consolidated for trial and heard on September 7, 1954. At the conclusion of the testimony the court requested trial briefs from the parties, which have been filed. By common consent the restraining orders entered by the state court have remained in force, pending the final disposition of the cases.

The plaintiffs pray for an injunction to restrain Phillips from disconnecting their irrigation wells from the gas lines. The plaintiffs allege that, as owners of farm land including the mineral rights in Texas county, on which Phillips holds oil and gas leases and has had producing gas wells thereon for a number of years, and confronted with severe drought conditions, they investigated the possibilities of drilling irrigation wells and operating them by natural gas from under their lands. They further allege that the field superintendent in charge of the Phillips leases in that section either agreed with plaintiffs that gas would be furnished by Phillips upon the drilling of the irrigation wells, or consented to the connection of irrigation wells which plaintiffs had drilled under the belief that Phillips would furnish the gas.

Phillips' answer and counterclaim denied any agreement by it to furnish gas to plaintiffs; denied that any agent or employee as authorized to make any such agreement; and alleged that such agreements were in any event never reduced to writing and therefore were void under the statutes of Oklahoma. In its counter-claim it sought relief from plaintiffs enjoining them from taking gas from the wells involved.

The evidence offered will be considered with reference to each case.

40] Cause Number 6018

Robert Lee, a stockholder in the Hitch Land and Cattle

Company, (hereinafter referred to as the Hitch Company) and a son-in-law of its president, George Hitch, testified that the Hitch Company and Harry H. Hitch, plaintiffs herein, owned the described lands involved, on which there was a producing gas well (Timmons) operated by Phillips. In the latter part of January, 1953, he and George Hitch went to the office of Dale Lewis, field superintendent of Phillips, to discuss the probability of securing gas for an irrigation well. Lee related the conversation and Lewis' statements as follows:

"A. (By the witness) We told him we contemplated drilling an irrigation well if gas would be made available to us; if the Phillips Petroleum Company would make gas available to us. He said they would; that several farmers there were using gas for irrigation and named several of them and said they would sell us gas, and that there would be a contract to be signed, that there would be no use to sign the contract until we drilled the well and see if we had water and if we didn't have water, there wouldn't be any use to sign the contract, and if we did we could negotiate a contract later. There would also be a meter to install at a cost of a $100.00. They didn't have a meter but while they would tie us onto the well, and would estimate the amount of gas used until we got a meter. Q. That occurred before you started an irrigation well? A. Yes, sir." (R.14-15)

Lee further testified that he had known Lewis for several years and that he had a good many field men under his supervision, some of whom were on the company property on plaintiffs' land nearly every day; that at any time difficulties arose concerning gas lines, road maintenance or any other problems, they were taken up with Lewis. The irrigation well was drilled after the conversation with Lewis, approximately a half mile from the Timmons well and plaintiffs installed a connecting gas line over 3,000 feet in length. The well was about 400 feet deep, irrigated over 300 acres, and cost about $14,000 plus considerable other expenditures for additional equipment for irrigation farming. From the completion of the well in April, 1953 until the trial in September, 1954, plaintiffs had been using Phillips' gas. A payment was made on account about June 1, 1954 on the basis of the field price and accepted with the agreement that it was without prejudice to the rights of the parties in this action. No objection

was made by Phillips to the use of gas for irrigation purposes until a letter, dated July 23, 1953, was received from an officer of Phillips advising that the plaintiffs' gas connection would be cut off unless severed by plaintiffs themselves.

Plaintiffs introduced a comparative statement prepared by Phillips for its proof on a motion to remand, showing the prohibitive cost of other fuel. The cost of using gas under plaintiffs' own land in an average year with continuous operation for 150 days; as calculated by Phillips, on the Timmons, Mayoe, Knott and Place wells, involved in these actions, would be respectively $390, $425, $300, and $600. The cost of utility company gas would be well over twice as much as that under plaintiffs' lands purchased at the field price of 9.8262¢ per Mcf, while the cost of propane, butane, diesel fuel and electricity is shown to range up to ten times the cost of their own natural gas.

Lee further testified that cost of conversion to diesel engines would be over $5,000 and that plaintiffs would not have drilled and equipped the well at a cost of $14,000 or more except for the assurance of Lewis concerning the availability of gas, and they therefore had the conference with Lewis before the money was spent. Particular details as to the volume of gas and time it was to be used were not discussed. With reference to Lewis' authority, Lee testified when asked if Lewis had negotiated a contract with anyone earlier: "Yes, he made the arrangements with the other farmers and had put in connections for the use of gas and we thought gas would be available to us." (R.28) Lewis referred to a contract which plaintiffs would sign after being tied on but did not say whether he would be the one to execute it. They had never been offered a written contract, while being willing and able to pay the field price for the gas used.

42] George Hitch testified that he had lived in Texas county for 66 years during which time he had done stock raising and farming. Irigation had been practiced there for five to ten years. His testimony corroborated that of Lee as to the conversation they had with Lewis; their reliance upon the representations of Lewis for proceeding to drill the well and the installation of a meter at the expense of plaintiffs; the subsequent payment for gas used until June 1, 1954; and that Lewis never advised them the contract would have to be made

through the Bartlesville office of Phillips. He further testified that the connection at the well was not made or paid for by plaintiffs.

Plaintiff Bill Logsdon testified that he had farmed the land involved here as a tenant since 1944; that the irrigation well was about 360 feet deep and was equipped with an eight-inch pump, sixteen-inch perforated casing and gas motor; that the land had to be leveled and he had to purchase special equipment for irrigation farming costing about $15,000, which was done after the arrangement was made by Lee and Hitch with Lewis. In addition to the work done on the well and the land, he dug a trench about two feet wide and thirty-five feet long and a one-inch line was laid to the gas well. The digging of the well and the laying of the pipe were observed by Phillips' employees on the premises.

Cause Number 6015

Mayoe Porter Buster, plaintiff, testified that she and her husband, Robert W. Buster, owned as tenants in common the described lands involved on which Phillips operated the Mayoe well. They decided to drill an irrigation well thereon in the Fall of 1952. Dale Lewis came to the Buster home in the latter part of December, 1952, or the first part of January, 1953, and discussed the matter of supplying the gas. Lewis stated in substance: "Go right ahead and complete your well. There is a valve that will have to be changed. We will change the valve and whenever you get ready, complete your well, in order to hook onto the gas, give us a ring and we will hook onto you." (R.69) The well was completed following this conversation and the gas connection was made. Later they signed a contract and gave a $100 check to cover cost of installation of a meter, but Lewis returned the check stating that the matter had been taken out of his hands and they he could not go ahead and make the contract. This conversation was sometime in May, 1953. The letter of Phillips announcing the cutoff of plaintiff's gas was received about July 24, 1953. The irrigation well and large reservoir tank had cost approximately $17,000, which expenditure was made in reliance on Lewis' representations as to the availability of gas.

43] Robert W. Buster testified that he had engaged in dry

land and irrigation farming most of his life. He corroborated the testimony of Mrs. Buster as to the drilling of the irrigation well; the conversation with Lewis; the expenditures as to the drilling of the well and the additional equipment, made in reliance upon Lewis' representations; and that they had never heard of any deviation by Phillips from the general practice and policy permitting royalty owners to use gas from their own land for irrigation. He further testified that Lewis announced the change of policy and that "his authority had been taken away from him to do that," this authority being described as his power "to issue the contract to us."

The Busters testified that Lewis did not state in his first conversation that any contract would have to be approved in Bartlesville, and mentioned this only when he brought the form of contract. This contract had certain objectionable limitations and they referred it to their attorney. When these limitations were discussed with Lewis, he warned that Phillips was cutting off gas users in Texas and they had better go ahead and sign. Under this compulsion the Busters signed the contract which Phillips rejected. The Busters made payment to Phillips of $375.40 to cover gas used by them based on the field price, with the understanding of a reservation of rights to the parties in this action. Buster testified that a change to a diesel engine would cost about $5,000; the cost of gasoline would be "enormous;" butane would cost more than ten times as much as natural gas; and electric facilities were not immediately available.

44] Cause Number 6017

Henry C. Hitch, Sr., plaintiff, testified that he had lived in Texas county seventy years, engaging in wheat and cattle raising; he and his wife own certain described land on which the Place well is operated by Phillips; and an irrigation well had been drilled four or five years ago by his son on nearby land on the Phillips Hitch-O lease and gas was used to power this well. Drilling of the two irrigation wells involved here (at a cost of $15,000 each and a further expenditure of $15,000 for leveling the land), was done in reliance upon the general custom and policy of Phillips to permit use of gas for irrigation purposes. The connection for the use of gas from plaintiffs' land was with the knowledge of the employees of Phillips who are on plaintiffs farm every day. The

first information concerning the change of policy and the intention of Phillips to cut off the supply of gas was their letter of July, 1953. Hitch testified further that in his opinion farm land such as his could not be operated profitably with any other fuel than natural gas for irrigation power; that he knew of other farmers who were using the gas; that Phillips had given a written contract for the use of gas on the Hitch-O lease; and that he knew of no prior instance where Phillips had denied the use of gas to landowners.

Cause Number 6016

H. C. Hitch, Jr., plaintiff, testified that five irrigation wells had been drilled on land owned by the Hitches where Phillips had leases, all of which irrigation wells are powered by gas. Prior to drilling the first well in 1950 on the Hitch-O lease he discussed the matter with George Allison, area superintendent for Phillips, who stated that gas would be available and they should proceed. The gas connections were made, the gas was used for several months when a contract was given plaintiffs and a meter installed.

45] Relying upon the general practice and policy of Phillips and other producers in the area of furnishing gas for the operation of the irrigation wells, the irrigation well involved here was drilled in the Spring of 1953 on the Knott lease, at a total investment of approximately $25,000 covering the cost of drilling, preparation of the land and purchase of additional equipment. Hitch further testified that employees of Phillips were on the property every day, checking the gas well, and that the circumstances of connecting the gas line, which took several days, were such that Phillips had notice of the connection. From his experience as a student at Oklahoma A. & M. College and his life-time in actual farming, in his opinion irrigation farming would not be profitable if natural gas could not be used for operation of the pump and that the Phillips dealer advised him other fuels would cost from ten to twenty times as much as gas.

The testimony on behalf of the defendant follows.

R. B. Stewart, assistant manager of the natural gas department of Phillips, described the origin of the contracts for sale of gas for use on irrigation wells, and the fact

that a total of eight agreements had been entered into with termination rights. He testified that any instructions concerning the contracts that were given to plaintiffs in these four cases were given by Lewis, and the company did not itself from Bartlesville advise the Hitches. The fi representative was given form contracts and instructed that if any royalty owners wanted gas for irrigation purposes they should be given one of these forms to sign and it would be sent to the Bartlesville office for consideration. The reasons for denying gas to plaintiffs were contractual commitments made earlier to pipeline purchasers and requirements for Phillips' manufacturing operations. He admitted that only a small percent of gas produced was used by these irrigation wells; that no landowner in Texas county had been denied the use of gas from under his land until 1953; that Panhandle Eastern Pipe Line Company, the purchaser of gas from Phillips, had made no complaint about the use of the irrigation gas by the landowners. He further stated that Phillips would not negotiate with any of the plaintiffs on any of the details of the contract: price, volume, or any matter, and concluded: "We are just not going to sell any gas for irrigation purposes out there." (R.175)

46] W. S. Etchitson, district superintendent of the Panhandle district, testified that Dale Lewis, as superintendent for the Hansford area working under his supervision, had authority to issue contracts, which when signed by the landowners, were submitted through Etchitson to Bartlesville for approval. He gave no authority to his field men to negotiate contracts, and the only man for the landowners to contact in connection with the use of gas in Texas county was Dale Lewis.

Dale Lewis testified that he did not negotiate contracts for furnishing of gas for irrigation purposes, but that he submitted contracts to those wanting gas, stating that they knew he had no authority to sign the contract. He admitted a conversation with Robert Lee and George Hitch occurred after the first of the year 1953 concerning the Timmons well involved in Cause Number 6018, when he advised them that Phillips had other contracts in the area and that he felt certain that they probably could get a contract for use of the gas, but that there was a form contract that must be signed in order to get the gas. His recollection was that Lee had said that if he decided to drill the well he would come back to see Lewis later.

He also testified with reference to Cause Number 6015 that the first meeting with the Busters was probably in March, 1953, when he presented a form contract for their approval; this was after the completion of their irrigation well and the commencement of use of gas. Shortly thereafter Buster expressed dissatisfaction with limitations in the contract on volume and possible cancellation, and he advised them that he had no authority to change the content of a contract; later he told them that he had heard rumors that Phillips was canceling the use of gas and urged that they sign the contract and pay the $100 for the meter, which they did. He denied that he advised the Busters that they could have gas without a written agreement and approval by the company at Bartlesville.

47] He further testified that the first time he learned of irrigation gas being used on the Knott and the Place pleases, involved in Causes Number 6016 and Number 6017, was during the running of a survey in about March, 1953, but that he did not know whether his field men knew earlier of the use of gas there. He admitted that he had authorized installation of the valve nipple on the Timmons well (Number 6018) and on the Mayoe well (Number 6015), but denied authorization of the installation of irrigation fuel lines to the valves. He admitted that as area superintendent for about three and a half years, his duty included contacts with landowners concerning their field problems; that he was the proper man to be contacted on these field matters and that he had discussed these matters with all the plaintiffs at one time or another.

With reference to the conversation between Hitch, Lee and Lewis, the preponderance of the evidence is that such a conversation did take place and that Hitch and Lee advised Lewis they were contemplating drilling wells for irrigation purposes but would not go to that expense unless they were assured Phillips would furnish gas for the operation of the pumps; that Lewis told them to go ahead and drill the wells and if they got water then they could make a contract for the use of gas, but at no time in that conversation did Lewis indicate that they would not furnish the gas, or upon any specific conditions. The court is of the opinion that the expenses for these two wells, in excess of $50,000, were incurred on the representation of Lewis that gas would be provided, and Lee and Hitch had a right to assume that the

gas would be provided at the field price.

48] With reference to the conversation between Lewis and the Busters, the evidence of the Busters was positive that the first conversation was had in the latter part of December, 1952, or early part of January, 1953, when they advised Lewis that they were contemplating drilling a well for irrigation purposes but would not do so unless they were assured that they would have gas to operate their pump. The preponderance of the evidence is that Lewis told them to go ahead and drill the well and if they found water, Phillips would make a contract with them for the use of gas. The Busters testified that later, after the wells were finished and the connections were made, Lewis did furnish a contract but this contract provided that defendant could eliminate the supply of gas on notice. This was not satisfactory to the Busters and they declined to sign the contract. They took the matter up with their attorney and Lewis later advised him that his authority had been withdrawn and that the contract would have to be approved at the Bartlesville office.

In the other cases involved, while there was no direct assurance by Lewis to the landowners that gas would be furnished, yet there was no indication on the part of Lewis that a sufficient supply of gas to operate their irrigation wells would not be furnished to all of the farmers on whose lands Phillips had leases.

One of the contentions of the defense in that Lewis had no authority to make these agreements to provide gas for irrigation purposes, yet Lewis was in complete charge of the operations of Phillips in that territory and it was admitted by the officers of the corporation that any matter affecting operations in that territory would have to be taken up first with Lewis.

49] After these irrigation wells were completed the connections were made by the representatives of Phillips or with their knowledge and consent. Lewis' testimony was that he did not know the connections had been made, but the testimony of other witnesses contradicts this statement, and it is apparent to the court that these connections were made with the knowledge and consent of those in charge of the operations in that territory.

The contracts which were submitted, and which Phillips contends were the only contracts that would be binding, provided that the gas could be disconnected after one year on thirty days notice. This would be an arbitrary provision of the contract and would clearly be inconsistent with the agreement made by Lewis. Certainly a farmer would not be inclined to drill a well at a cost of $15,000, supply the necessary equipment for operation thereof, and condition the surface of the land so that it could be properly irrigated, if he were faced by a provision in the contract which would deprive him of the use of the gas after one year on thirty days notice. It was the custom in that territory to provide gas for irrigation purposes from gas wells on the landowner's property, and all the other companies except Phillips recognized that custom and practice. It is apparent that the expenses would not have been incurred for drilling and equipping the wells and preparing the lands for irrigation had it not been for the specific representations made by the representatives of Phillips who were actually in charge of the operations in that territory.

The principal contention of Phillips is that its previous contractual commitments to pipelines required all of the gas supplied from these wells. However, the record discloses that the pipeline purchaser under these alleged contracts made no objection to the use of gas for irrigation purposes, and the total amount of gas used for irrigation purposes did not exceed three percent of the total amount produced.

The testimony of R. B. Stewart, assistant manager of
50] Phillips' natural gas department, was that the production per year on each of the wells involved here was: 106 MCF on the Mayoe; 106 MCF on the Knott; 52 MCF on the Place; and 92 MCF on the Timmons, or that the four wells produced in excess of 346 MCF per year. Quoting from the testimony of this witness:

"Q. So the total amount of gas that would be used by the lessors would be approximately three percent of the production of the well. A. In that particular instance, yes, sir. There are cases I think where the people have wanted to drill several irrigation wells and attach to one gas well." (R.170)

"Q. You are not contending what these four farmers use for irrigation purposes is cutting down the supply you have to supply the Panhandle with, do you? A. To the extent that the Panhandle is making any complaint, no, because the amount of gas used by these four wells is an insignificant amount of gas, but I want to make one point clear and that is, we have tried to accomodate all that we felt we could until the time has come now, where there is evidence that there is going to be a tremendous demand for this thing and if we continue to let one royalty owner have gas for irrigating his lands, we feel we will be in a worse position than we are in denying that one, and they would probably accuse us of discrimination. Q. Don't you recognize a distinction between a man who has spent $15,000 or $20,000 in drilling a well relying on the fact that he would have a right to use natural gas from the man who knows in advance he can't get it and spends no money in drilling a well upon that assurance? A. Well, I don't think it would stop there. That is the company's difficulty. We don't know that someone might drill a well and get it to our lines, and say they relied on the fact we served people in the past. We have got to draw the line somewhere." (R.168-169) (Emphasis supplied.)

The record discloses the comparative cost of available fuels for operation of these irrigation wells per year to be: $390 to $600 for Phillips gas; $885 to $1,770 for West Texas Gas Company gas; $3,030 to $6,060 for propane and butane; $5,050 to $10,100 for gasoline; $2,270 to $4,540 for diesel; and $2,010 to $4,020 for electricity.

Summarized, Phillips' contentions are: First, that the alleged oral contracts are invalid for the reason that they are violative of the statute of frauds; Second, that Dale Lewis had no authority or power to make the alleged oral contracts; and, Third, that since Phillips had entered into a contract to sell the entire production from its gas wells in Texas county, that it could not consistently supply gas for irrigation purposes.

51] The plaintiffs contend, however, that oral contracts, under such circumstances as surround the transactions involved in the cases at bar, have been approved by the Supreme Court of Oklahoma in Lacy v. Wozencraft, 188 Okl. 19, 105 P.2d 781, and Flesner v. Cooper, 62 Okl. 263, 162 P. 1112.

They also cite Restatement of Contracts, Section 90, and Wolfe v.Wallingford Bank and Trust Company, 124 Conn. 507, L. Atl.2d 146. Plaintiffs conclude that under the law discussed in the above authorities, the doctrines or promissory estoppel and equitable estoppel apply and they are entitled to relief against the threatened action of Phillips to cut off their gas supply.

As to whether Lewis had authority to bind his company in the alleged oral contracts, all the circumstances surrounding the transactions must be taken into consideration. These irrigation wells are on the farms owned by plaintiffs, on which Phillips holds mineral leases. For the past five years at least gas has been furnished plaintiffs and others for irrigation purposes with the full consent of Phillips. The custom of providing gas from one's own farm for irrigation purposes was recognized and followed by all the gas companies operating in that area. Lewis was the superintendent in charge of the operations of Phillips in Texas county, and any problems concerning same in which the farmers were interested were to be taken up with Lewis. Insofar as these farmers were concerned, in all matters with Phillips, Lewis was recognized as Phillips. Lee, Hitch and the Busters discussed their proposed drilling of irrigation wells with Lewis, and while Lewis stated that later written contracts would be provided, he did tell these plaintiffs that they should "go ahead" and drill the wells and that gas would be furnished. Nothing was even intimated that the proposed written contracts would include a provision for only one year's supply of gas and that the contract could be terminated by giving thirty days notice. The gist of the oral contract was "you dig your wells, we'll furnish the gas."

52] It was well known to Lewis that the drilling of a well, providing equipment and preparation of the land for irrigation would necessitate expenditures on each farm of approximately $25,000. It was also well known to Lewis that unless the farmers could secure gas, this enormous expense would not be incurred.

Lewis was held out by Phillips as being its spokesman in Texas county and his conduct indicated his authority. Lewis' statement to the Busters, that the authority to make contracts had "been taken out of his hands," bears the strong

inference that this authority had been in his hands, but had now been terminated. If this be true then months before when the alleged oral contracts were made, Lewis actually had the power to make the contracts.

Not until the July 23, 1953 letter from Bartlesville did any of the plaintiffs suspect that the supply of gas would be arbitrarily terminated.

The third contention that the sale of the entire production was covered by contract to the pipeline company, in view of the testimony of Phillips' own witness, is without merit.

A further contention of Phillips, and which is apparently the real reason for terminating its willingness to supply gas for irrigation, is that Phillips simply changed its policy with reference to sale of gas for irrigation purposes.

An examination of the authorities cited by Phillips in its brief has been made, but the court is convinced that an equitable consideration of all the facts and circumstances justifies the conclusion that plaintiffs are entitled to the relief sought, and a permanent injunction will issue in accordance with plaintiffs' prayer.

Since the filing of this suit and even since its trial, the Oklahoma Legislature has passed an Act which by its terms would make an injunction unnecessary, however, this Act has not been considered in deciding the issues in these cases.

53] Findings of fact and conclusions of law, consistent with this opinion, may be submitted by plaintiffs' attorneys within fifteen days of this dated.

Edgar S. Vaught
United States District Judge

Dated this 7th day of September, 1955
Filed September 7, 1955.

54] Findings Of Fact And Conclusions Of Law.

The above entitled cause was tried by the Court without a jury on September 7th and 8th, 1954. The cause was tried on said date in conjunction with Nos. 6016, 6017 and 6018, and the evidence was presented and considered jointly to apply to all four causes. The Court, having heard and considered the evidence, and having examined the briefs thereafter filed by the parties, and being fully advised in the premises, does hereby make the following findings of fact and conclusions of law:

Findings of Fact

The Court finds:

1. Mayoe Porter Buster and Robert W. Buster, wife and husband, are residents and citizens of the State of Oklahoma, and the tract of land hereinafter described is operated by them for agricultural purposes.

2. Phillips Petroleum Company is a corporation organized and existing under the laws of the State of Delaware, and A. M. Rippel is a nominal party in this action and does not affect the jurisdiction of the Court.

3. Plaintiffs, Mayoe Porter Buster and Robert W. Buster, are owners in fee simple of the Northeast Quarter (NE/4) of Section Twenty-Eight (28), Township Two (2) North, Range Fifteen (15) East, Cimarron Meridian, Texas County, Oklahoma.

55] 4. Phillips Petroleum Company holds oil and gas leases on all the above described land and has a producing gas well, known as the Mayoe Well, located on said Section Twenty-Eight (28).

5. Dale Lewis has, since early 1951, been the field superintendent of Phillips Petroleum Company in Texas County, Oklahoma, and for the area including the above described land. The said Lewis was the agent and servant of Phillips Petroleum Company and was authorized to and did make arrangements for and on behalf of said company, and represented said company, in connection with arrangements with farmers, including these

plaintiffs, concerning operation of gas wells and related operations of said company generally in the vicinity of Texas County, Oklahoma; and in particular, the said Lewis was authorized to and did make arrangements for and on behalf of said company, and represented said company in connection with arrangements for the sale of gas for the operation of irrigation water wells in said vicinity, including said land, to the extent and in the manner as shown in Findings No. 5 and No. 6 hereof, and in doing all other things for and on behalf of said company which he is found herein to have done; and since early 1951, the Phillips Petroleum Company held out the said Dale Lewis to these plaintiffs and to farmers generally in the vicinity including said land in Texas County, Oklahoma, as its spokesman, agent and servant authorized to conduct negotiations for and to represent said company in negotiations for the sale of natural gas for operation of irrigation water wells in said vicinity including said land; and the said Lewis had, and it was made to appear by defendant, Phillips Petroleum Company, to these plaintiffs and to farmers generally in the vicinity including said land, that the said Lewis had authority to do all things which he is found herein to have done and to make all of the commitments he is found herein to have made for and on behalf of the said Phillips Petroleum Company.

56] 6. In about December, 1952, the said Dale Lewis, being such agent and representative of Phillips Petroleum Company, represented, promised and agreed with plaintiffs that if they completed the drilling and equipping of an irrigation well on said land last hereinabove described, said Phillips Petroleum Company would provide natural gas produced by said company from said land in the amount reasonably necessary for the operation of said well. In reliance upon said representation, promise and agreement, and upon the custom, practice and policy stated in Finding No. 12, plaintiffs subsequently completed said irrigation well on said land and equipped the same. Such completion of said well and equipping of the same cost the Plaintiffs about $17,000.00, and more than $10,000.00 of such expenditure was invested by plaintiffs after the said Lewis' representation, promise and agreement, and all in the reliance thereon; and the said Phillips Petroleum Company did, from and after about January 15, 1953, permit plaintiffs to use and purchase natural gas from the gas well on the said section reasonably necessary

to operate such irrigation water well.

7. Said irrigation water well on said land as drilled and equipped by plaintiffs is about 390 feet deep and has irrigated approximately 160 acres of land during 1953 and 1954 to the time of trial.

8. Phillips Petroleum Company, By and through its agents, servants, and employees performing duties on said land in the vicinity of said irrigation water well, had knowledge and notice of plaintiffs' expenditures in completing the drilling and equipping of said water well and preparation of said land for irrigation, and that such expenditures and preparations were in reliance upon the representation, promise and agreement, custom, practice and policy of defendant, Phillips Petroleum Company, concerning the providing of natural gas produced by the said company from said land reasonably necessary for the operation of said water well. Said defendant, by and through its agents, servants, and employees, installed the value for the connection with plaintiffs' line for receipt of gas for operation of said well; and said defendant, since said connection on about January 15, 1953, has had notice and knowledge of such use of gas for such irrigation purpose at said irrigation water well:

9. Severe drought conditions affecting the vicinity including said land in recent years have made irrigation necessary and proper for continued agricultural use of said land with reasonable assurance of profit.

10. The irrigation water well drilled on said land necessary to obtain a reasonably adequate supply of water is about 390 feet deep. The use of other fuels to lift water for irrigation from said well would cost annually about $905 or $1,165 for utility company gas; $4,275 for propane and butane; $7,125 for gasoline; $3,205 for diesel fuel; and $2,680 for electricy, all as against about $425 for natural gas at the wellhead price, 9.8262¢ per mcf; and equipment for the use of diesel fuel or electricity would further cost about $5,000 or $1,500, respectively. Such natural gas produced on said land, at a reasonable price, is the only fuel whose use will permit necessary irrigation for agricultural use of said land with reasonable assurance of profit.

11. Attempted recovery of compensation by these plaintiffs for damages caused by the threatened disconnection of gas by defendant, Phillips Petroleum Company, and refusal and failure of said defendant to permit the use and purchase of natural gas for such irrigation by plaintiffs, by actions at law, will and would require continuing and numerous suits between the parties, producing a multiplicity of actions.

58] 12. Until about July, 1953, it was the general custom, practice and policy of defendant, Phillips Petroleum Company, and other companies having producing gas wells in the vicinity of said land in Texas County, Oklahoma, to permit the use and purchase of natural gas at reasonable prices and in such amount as is reasonably necessary for such irrigation operations from gas wells on irrigated land.

13. The reasonable amount of natural gas used and purchased from the Mayoe Well on said land in 1953 and 1954, for the operation of the irrigation water well on said land, amounted to approximately 13,090 cubic feet per day and said water well is used approximately 150 days per year, or about 1,963.500 cubic feet of gas were reasonably used and necessary for annual irrigation operations. The natural gas produced from the Mayoe Well on said section amounted to approximately 106,000,000 cubic feet in 1953, and the allowable production of natural gas from said well during said year was approximately 108,000,000 cubic feet, so that less than two per centum (2%) of the said gas was used for irrigation. The pipe line purchaser from defendant has expressed its consent and approval of such use of gas for irrigation purposes.

14. Defendant, Phillips Petroleum Company, on about July 23, 1953, warned and advised plaintiffs that unless the connection between the irrigation water well on said land and said defendant's gas line from the Mayoe Well on said land was severed by plaintiffs before September 1, 1953, said defendant would disconnect the same. Said defendant, Phillips Petroleum Company, from July 23, 1953, has threatened and continues to threaten that it will refuse to permit the use and purchase of any natural gas for irrigation purposes by plaintiffs on said land from the gas produced by the Mayoe Well on said land, and said defendant from said date has refused and continues to refuse to undertake any negotiations concerning such use and purchase of gas by plaintiffs for such purpose.

59] Conclusions of Law

The Court makes the following conclusions of law:

1. The Court has jurisdiction of the parties and the subject matter of this action.

2. The said Dale Lewis had authority from defendant, Phillips Petroleum Company, to make the representation, promise, and agreement which he is found to have made in these findings and conclusions; such authority for making such representation, promise and agreement for defendant, Phillips Petroleum Company, is reasonably implied from the authority granted to the said Dale Lewis by defendant; and his authority was, by defendant, Phillips Petroleum Company, made to appear to include authority to make such representation, promise and agreement for defendant, Phillips Petroleum Company, to plaintiffs and farmers generally in the vicinity including said land.

3. Defendant, Phillips Petroleum Company, is obligated, by reason of its conduct, representation, promise and agreement, to permit the use and purchase by plaintiffs at a reasonable price, during the continuance of irrigation operations on said land, from natural gas produced thereon by said defendant, of such amount of natural gas as is reasonably necessary for such irrigation, and plaintiffs are obligated to make any such purchase of natural gas for such irrigation requirements from said defendant.

60] 4. Defendant, Phillips Petroleum Company, is estopped by reason of its conduct, representation, promise and agreement, and reliance by the plaintiffs thereon with said defendant's knowledge, to deny or repudiate such obligation or to refuse permission for such use and purchase of such natural gas by plaintiffs. Said defendant is further estopped to assert the statute of frauds as a defense to avoid such obligation and permission for such use and purchase of such natural gas by plaintiffs; and the repudiation of such obligation and the assertion of the statute of frauds as a defense in this action is inequitable and unjust, and should not be permitted by a court of equity.

5. Plaintiffs have no adequate remedy at law; plaintiffs would and will suffer irreparable injury from said defendant, Phillips Petroleum Company's threatened disconnection of gas to plaintiffs' irrigation water well, and defendant's threatened refusal to permit the use and purchase of such natural gas for such purpose by plaintiffs unless equitable relief is granted; attempted recovery of damages at law by these plaintiffs to compensate for injury by such threatened action by said defendant would require a multiplicity of actions, burdensome on the Court and the parties; and the Court finds equitable relief as prayed for to be just and proper, and required by equity and good conscience in the premises.

6. Defendant, Phillips Petroleum, its officers, agents, servants and employees, should be restrained and enjoined from disconnecting plaintiffs' gas line connecting their water well irrigating the Northeast Quarter (NE/4) of Section Twenty-Eight (28), Township Two (2) North, Range Fifteen (15) East, Cimarron Meridian, Texas County, Oklahoma, with defendant's producing gas well, known as the Mayoe Well, located on said land; and from refusing or failing to permit the use and purchase by plaintiffs at a reasonable price, during the continuance of such irrigation, from gas produced on said land, of such amount of natural gas, as is reasonably necessary for such irrigation on said land.

61] Dated this 4th day of November, 1955.

Edgar S. Vaught
U. S. District Judge

Filed November 4, 1955.

62] Judgment.

The above entitled cause was tried by the Court without a jury on September 7th and 8th, 1954; and the Court, having heard and considered the evidence offered and having examined briefs thereafter filed by the parties, and being fully advised in the premises, finds:

That the Court has jurisdiction of the parties and the

subject matter of the action; that plaintiffs are entitled to final judgment restraining and enjoining the defendant, Phillips Petroleum Company, as prayed for by plaintiffs, by reason of the findings of fact and conclusions of law made by the Court herein on the 4 day of Nov., 1955; that plaintiffs have no adequate remedy at law; that plaintiffs would and will suffer irreparable injury from said defendant, Phillips Petroleum Company's threatened disconnection of gas to plaintiffs' irrigation water well, and said defendant's threatened refusal to permit the use and purchase of such natural gas for such purpose by plaintiffs, unless equitable relief is granted; that attempted recovery of damages at law by these plaintiffs to compensate for injury by such threatened action by said defendant would require a multiplicity of actions, burdensome on the Court and the parties; and that equitable relief as prayed for is just and proper, and required by equity and good conscience in the premises.

62-A] It Is Therefore Ordered, Adjudged And Decreed That Defendant, Phillips Petroleum Company, its officers, agents, servants and employees, are hereby restrained and enjoined from disconnecting plaintiffs' gas line connecting their water well irrigating the Northeast Quarter (NE/4) of Section Twenty-Eight (28), Township Two (2) North, Range Fifteen (15) East, Cimarron Meridian, Texas County, Oklahoma, with defendant's producing gas well, known as the Mayoe Well, located on said land; and from refusing or failing to permit the use and purchase by plaintiffs at a reasonable price, during the continuance of such irrigation, from gas produced on said land, of such amount of natural gas as is reasonably necessary for such irrigation on said land.

Dated this 4 day of Nov., 1955.

Edgar S. Vaught
United States District Judge

Filed November 4, 1955.

63] Notice Of Appeal.

Notice is hereby given that Phillips Petroleum Company, a corporation, one of the defendants above named, hereby

appeals to the United States Court of Appeals for the Tenth Circuit from the final judgment entered in this action on the 4th day of November, 1955.

Dated November 30, 1955.

Rayburn L. Foster
Harry D. Turner
R. M. Williams
Kenneth Heady
Cecil C. Hamilton
Attorneys for Appellant

Filed Nov. 30, 1955.

[An appeal bond was filed November 30, 1955.]

67] Transcript Of Proceedings Re Motion To Remand.

In the United States Court House and Post Office Building, Oklahoma City, Oklahoma. September 22, 1953.

Before: The Honorable W. R. Wallace, United States Judge for the Northern, Eastern, and Western Districts of Oklahoma.

Appearances: For the Plaintiffs: Tryon & Sweet (by) Orlando Sweet, Guymon, Oklahoma. Embry, Johnson, Crowe, Tolbert & Boxley (by) V. P. Crowe, First National Building, Oklahoma City, Oklahoma. For the Defendants: R. M. Williams, Legal Department, Phillips Petroleum Company. Bartlesville, Oklahoma. Cecil Hamilton, Legal Department, Phillips Petroleum Company, Oklahoma City, Oklahoma. Kenneth Heady, Bartlesville, Oklahoma.

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* * * * *

111] F. H. RAMSTEAD, called as a witness on behalf of the defendants, testified as follows:

Direct Examination By Mr. Williams:

Q. State your name. A. F. H. Ramstead.

Q. Where do you live, Mr. Ramstead?

A. In Bartlesville, Oklahoma.

Q. You are connected with the defendant, Phillips Petroleum Company? A. Yes, sir.

Q. In what capacity? A. I am a gas equipment estimating engineer.

Q. What are your educational qualifications as an
112] engineer, Mr. Ramstead? A. I have a bachelor of science degree from Montana State College in chemical engineering.

Q. How long have you been with the Phillips Petroleum Company? A. About seven years and three months.

Q. Do you have occasion, Mr. Ramstead, in your capacity with the company and your profession, to estimate and determine the cost of different fuels for different uses?

A. Yes, sir.

Q. Are you acquainted with the cost of the fuel that would be used to operate engines such as are involved in this lawsuit; that is gas?

A. Yes, sir.

Q. Can you state briefly the size of the engines that are used by the plaintiffs in this case on their wells?

A. Yes, sir, from the information that I have, to the best of my knowledge, there are two 85 horsepower engines, one 110 horsepower engine, one 120 horsepower engine, of the automotive type.

Q. Are you acquainted with the period of time in the Panhandle area that engines are used for irrigation per year? A. Yes, sir.

Q. Your company has a contract with certain farmers in that immediate area for the use of gas for the operation of irrigation engines, have they not?

A. Yes, sir.

Q. You are acquainted with the time period that those farmers are engaged in the irrigation, or what the water pumping season is per year? A. I am acquainted with the pumping season. That's common knowledge, and that is an average that is used in general discussion of the irrigation

throughout an average year, yes, sir.

Q. In this area? A. Yes, sir.

Q. What is that pumping season? A. 150 days, roughly, five months.

Q. You say that you are acquainted with the quantity of gas required to operate engines of the character to which you have referred for a given period of time?

A. Yes, sir.

Q. Have you made such a computation on these engines per year for a pumping season of 150 days? A. Yes, sir.

Q. Will you state what that is? A. Just what do you mean by that, sir, what is all together or individually?

Q. What is, state individually, and based upon, you say a rate of 9.82 cents, do you not, based upon your rate of 9.82 cents per MCF? A. Yes, sir; for the well that has the 110 horsepower engine, the yearly rate based on five months of continuous operation at 9.82 cents per MCF, would be $390.00

Q. Now which well is that, by name?

114] A. That's the Timmons well.

Q. Timmons well? A. Yes, sir.

Q. That's the well that's involved in the lawsuit brought by Hitch Land & Cattle Company? A. It's my understanding that it is.

Q. Now give the information as to the other wells, giving the name of the wells. A. All right. The Mayoe well, which it is my understanding also is involved, and from my information has 120 horsepower motor, the yearly cost, based on the five months, would be $425.00, approximately.

The Knott well, which it is my understanding is involved in this lawsuit, and from the best information I have has an 85 horsepower motor, would amount to $300.00.

The Place well, which it is my understanding is involved in this lawsuit, has from the best information I can obtain two 85 horsepower engines. These two 85 horsepower engines would consume gas costing approximately $600.00 per year.

115] Q. Mr. Ramstead, have you had occasion in connection with these same operations to study and determine what the cost would be for carrying on those same operations by other fuels that might possibly be available for operating those wells?

A. Yes, sir, I have.

Q. What other fuels might possibly be avialable in that

area?. A. There would be propane and butane, there would be gasoline, and if the operators wished to go to Diesel power, there would be Diesel fuel; and if the operators wanted to go to electric power, there would probably be electric power available.

Q. Let's take those fuels one at a time. You say you have made a study as to what the cost would be to convert to propane or butane and what the annual cost would be of that fuel? A. Yes, sir.

Q. Will you state that per well, giving the name of each well? A. Yes, sir. On the --

Mr. Crowe: (Interposing) Excuse me, if the Court please. They seem to be using some kind of compilation. We would like to have a copy he is testifying from.

Mr. Williams: All right.

The Witness: On the Timmons well, the cost of conversion to a propane, would probably be about $100.00. That would probably be true of all these engines, to the best of my knowledge.

116] The cost of the fuel, using propane or butane per year, on the Timmons well, would be about $3,920.00.

The Mayoe well, the cost of butane and propane would be approximately $4,275.00.

The Knott well would be approximately $3,030.00 per year.

The Place well, which has two engines, would be approximately around $6,060.00.

By Mr. Williams:

Q. Would the cost of conversion in each instance be approximately the same, or different?

A. To the best of my knowledge, very close to the same. It probably would vary with the horsepower.

Q. Now I'll ask you if you made the same computation with respect to the use of Diesel fuel in the operation of these wells. A. Yes, sir.

Q. Would you state for the record, please, sir?

A. If Diesel power were used, of course a Diesel engine would have to be purchased. To the best of my knowledge a common motor cannot be converted to a Diesel. That would cost, assuming that a 100 horsepower Diesel would be installed in the two cases of these rough figures, where we have the 110 and 120 horsepower motors, the cost ~~of the Diesel~~ would be approximately $5,000; and the other two wells, the cost of a somewhat smaller Diesel would be approximately $3,000.

117] The yearly cost of the Diesel fuel on the Timmons well would be approximately $2,940.00.

For the Mayoe well, approximately $3,205.00.

For the Knott well, approximately $2,270.00.

For the Place well, which has two motors, it would be roughly $4,020.00.

Q. I believe you mentioned the fact that gasoline would be an available fuel in this area? A. Yes, sir.

Q. For that operation. Have you made any computation with respect to cost of converting to gasoline and the fuel cost per year? A. Yes, sir.

Q. On these same wells? A. Yes, sir.

Q. Will you state that, please, sir?

A. The cost of converting to gasoline would be slightly higher than propane and butane, probably about $200.00 per motor; and the yearly cost of gasoline for the Timmons well would be about $6,535.00; for the Mayoe well, about $7,125.00.

118] For The Knott well, about $5,050.00; for the Place well, which has two motors, about $10,100.00.

Q. I believe you also testified that electricity was a fuel that probably, I believe was your statement, would be available? A. Yes, sir. I am familiar only with what information I could get from those who should be familiar with that.

Q. Do you know what the cost per kilowatt would be for electricity in the area? A. No, sir, I do not know. I know only what I have been told from inquiring in the general area.

Q. Do you have any knowledge as to what the replacement cost or the conversion cost would be? A. Yes, sir.

Q. To convert from a gas engine to an electric motor?
A. Yes.
Q. You do know that? A. Yes, sir.
Q. Would you state that in regard to these wells?
A. Yes, sir. For the two wells having engines of over 100 horsepower, the cost of an electric motor to replace those present motors would be about $1,500.00.
The cost of replacing the two 85 horsepower motors by electric motors would be about $1,200.00 apiece.
Q. Now are you familiar from your knowledge of the application of this power the approximate number of kilowatt hours that would be used to develop the power to pump these wells? A. Yes, sir.
Q. Would you state that per well? A. I don't have that right at hand. You have asked the number of kilowatt hours. If you want the cost based on 1 cent per kilowatt hour which I have been given, I can furnish that readily.
Q. Well, you stated that you didn't know personally.
A. That's right, I did not personally know what the minimum price per kilowatt hour was.
Q. Well, 1 cent per kilowatt hour would be a minimum?

Mr. Crowe: Well, I just don't have any information on the subject. If you have any, if that is right --

Mr. Williams: (Interposing) That's a bare minimum.

Mr. Crowe: Well, I just couldn't. I am willing to take your statement for it, if you know, because I don't really have any information.

By Mr. Williams:

Q. Your computation was based upon 1 cent?
A. My computation was based upon 1 cent, due to the fact that I did not know exactly. I do believe that is low.
Q. Now your figures, are they based upon an effort to arrive at an exact figure, or are they on --
A. (Interposing) No, sir.
120] Q. On what base did you use? A. My basis was to use figures that are generally acceptable in the gas industry and the motor industry on fuel consumption and power consumption. I have tried to be conservative in my estimates on the use of these figures.

Q. And in using the 1 cent, you were endeavoring to be conservative? A. In using the 1 cent, I was endeavoring to be conservative. I have been told the minimum is 1 1/2 cents, but I don't know that.

Q. As a result, you took 1 cent? A. As a result, I took 1 cent.

Q. Will you state what that cost would be based upon the 1 cent minimum? A. Yes, sir. For the Timmons well, that would be approximately $2,680.00 per year.

For the Mayoe well, it would be approximately the same; that is assuming that a 100 horsepower electric motor would replace these two engines that have over 100 horsepower.

For the Knott well, the cost, assuming that a 75 horsepower electric motor would replace an 85 horsepower automotive type, would be approximately $2,010.00 per year.

The Place well, which would require two motors, the cost would be approximately $4,020.00.

121 Q. Now are you acquainted with the gas rates that are charged by gas companies for gas in the Panhandle area? I believe there are two companies out there, Southwestern Light & Power Company and another company.

A. To my knowledge, there is only one company, Southwestern Public Service Company.

Q. Are you acquainted with its rates? A. Yes, sir.

Q. For that area? A. Yes, sir.

Q. And have you computed what the cost for fuel would be to these wells based upon the rates charged by that company?

A. Yes, sir.

Q. Will you state what that is? A. If the gas were bought from the Public Service Company, Southwestern Public Service Company, at their rates, the cost per year on the Timmons well would be about $845.00.

On the Mayoe well, about $905.00; on the Knott well, about $690.00; on the Place well, which has two motors, about $1,380.00.

Q. Do you know what it would cost per mile for these plaintiffs to lay lines to connect with the facilities?

A. Offhand I don't know, sir. I could compute it.

Mr. Crowe: Object to that because the cost of the line in there wouldn't be any measure of the value of our right here.

122 Mr. Williams: What it would cost the plaintiff?

The Court: I am going to overrule the objection and I will disregard the testimony if it shouldn't be considered.

The Witness: No, sir, I don't know exactly what it would cost. I could give you a minimum figure if you wished that.

By Mr. Williams:

Q. Is that based upon your experience?

A. That would be based upon my experience. The way the plaintiffs might lay a line would probably be different than the way a contractor would lay the line, and I don't know what size line they would use.

Mr. Crowe: If the Court please, I think that would be mere, pure speculation. He hasn't even stated what size line.

By Mr. Williams:

Q. Mr. Ramstead, do you know what size line would be required to deliver the gas? A. No, sir, I haven't made calculations on that. I would estimate in a 1 inch line, offhand, would be necessary.

Q. Do you have calculation on what the cost of laying per mile would be for an inch line?

A. Cost of laying a 1 inch line? I do not have the calculation, but the cost of the pipe alone would be 13 cents a foot at a minimum for a 1 inch line. 13 times 5,280 would be roughly at least $700.00 per mile.

Q. Now the various costs of fuel that you have given here are those over and above what the cost of converting to that type of fuel would be? A. Yes, sir.

Q. You have given those items separately into this record? A. Yes, sir.

Mr. Williams: I believe that's all.

Cross Examination By Mr. Crowe:

Q. Mr. Ramstead, have you been testifying from an instrument titled "Panhandle Irrigation Summary of Costs of Various Water Wells", which contains two pages?

A. Yes, sir.

Q. I believe on the second page of your computation you have tried to compute yearly fuel costs in the various types of fuel, is that right? A. Yes, sir.

Q. You also have on the, I believe in the first column, it's really the third column on the sheet, but you have it in there, the calculation of the yearly cost of this gas at 9.8262 cents? A. Yes, sir.

Q. The next column refers to the yearly cost of using SWPS gas, what's that? A. That's Southwestern Public Service gas.

Q. Southwestern Public Service gas?

124] A. Yes, sir.

Q. And now on the next column you have "Yearly cost using West Texas Company gas".

A. Yes, sir. That column is based on West Texas Gas Company, in the vicinity of Lubbock. That's merely for comparative purposes.

Q. You took these various types of fuels that would be available to these plaintiffs in that area, by either using equipment they have or in some instances converting to other equipment, is that right? A. Yes, sir.

Q. All right. Now then, the only conversion costs that you show, I believe, are in cases of the use of Diesel fuel or electric fuel? A. That's right, sir.

Q. All right. Now then, take this Timmons well that, I believe, is involved in one of these lawsuits. You say that if it used, bought gas from Southwestern Public Service, it would cost $845.00; if it paid the Phillips rate, it would be $390.00 for the ordinary average season; is that right?

A. Yes, sir.

125] Q. And $390.00 subtracted from $845.00 would be how much more it would cost, over using Phillips?

A. $845.00, subtract $390.00, is $455.00.

Q. Do you mean by that, if Phillips disconnected and they bought gas from Southwestern Public Service Company, that for the operation of that water well for the average period of

five months in any season, the difference in cost of the service would be $455.00? A. No, sir, I don't say that.

Q. That's the result of your figures you have on here, isn't it? A. Mr. Crowe, I have this estimate. I don't know what Phillips would do, I don't know whether you could buy gas from Phillips or not for 9.8262 cents. I have made those estimates. You asked me what $845.00 minus $390.00 is, and I have given you the answer.

Q. I wasn't trying to trap you at all, but I assume that you put up here the figure $845.00 as what in your best judgment it would cost to get it from Southwestern?

A. Yes, sir, that's right.

Q. And also, if you figured that Phillips gas at the, I believe that's probably the minimum price fixed by the Corporation Commission? A. Yes, sir, that's what it is.

Q. So you would have on that one well a difference, using
126] your own figures as you presented them here, of $455.00?

A. Yes, sir.

Q. And that's your best judgment?

A. Yes, sir.

Q. All right, now on the Mayoe well, would you for the record give us the difference in the yearly cost of gas between the Southwestern Power and this cost from Phillips at the minimum price? A. Yes, sir. The difference in cost between the, the yearly Southwestern Public Service gas and the cost of gas at 9.8262 cents would be the difference between $905.00 and $425.00, which is $480.00.

Q. Now on the Knotts well, would you give us the difference in the cost of the gas of the fuel for a year's operation? A. Yes, sir. The difference between the yearly cost, using Southwestern Public Service Company gas and the yearly cost using gas at 9.8262 cents, is $690.00 minus $300.00, or $390.00.

(Defendant's Exhibit 1, being a tabulation of yearly fuel costs, was marked for identification.)

By Mr. Williams:

Q. Now will you refer to what is marked as Defendant's Exhibit 1 and state whether or not that is the tabulation from which you are now testifying.

A. Yes, that is.

127] Mr. Williams: We would like to offer Defendant's Exhibit 1 in evidence.

The Court: All right.

Mr. Crowe: I might generality object to it, your Honor please, that it is not a proper way to arrive at it, But I haven't any serious objections to it.

The Court: All right, let it be admitted as Defendant's Exhibit 1.

(Defendant's Exhibit I was received in evidence.)

By Mr. Crowe:

Q. Now then, down at the Place well, I believe you show two motors on it; don't you? A. Yes, sir.

Q. And what would be, according to your calculations, the difference in the cost of gas from Southwestern Power and the minimum price from Phillips? A. That would be $1,380.00 minus $600.00, or $780.00.

Q. And then you have the Cairo well, one motor, do you not, on your exhibit? A. Yes, sir. As I understand, that well is not involved directly in this litigation.

Mr. Crowe: Is that true?

Mr. Williams: That's correct. We ask that it be agreed and stipulated with respect to the Cairo well that it's not material to this lawsuit.

128] The Court: All right, let the record so show.

By Mr. Crowe:

Q. Now I believe for our information, it's a matter of calculation, but this yearly cost, using Texas gas, the difference between that and the yearly cost of Phillips gas would give you the figures on each of the wells?

A. Yes, sir, based on the cost of West Texas Gas Company gas in the Lubbock area, the difference between that, which is $1,085.00 and the yearly cost at 9.8262 per MCF which is $390.00, would be $695.00.

Q. Take the next one. A. Yes, sir. On the Mayoe, the difference in the cost would be $1,165.00 minus $425.00, which would be $740.00.

Q. And the next one? A. The Knott well, the difference in the cost using West Texas Gas Company rates, which is $885.00 minus $300.00, would be $585.00.

Q. All right, sir, the next one? A. The Place well, with the two motors, using West Texas Company gas rates, would be $1,770.00, minus $600.00, or $1,170.00.

Q. Now on your calculations, Mr. Ramstead, on the other types of fuel that you have shown here.

A. Yes, sir.

Q. If you were going to get the difference in cost of gas and those other types of fuels, you would deduct the amount that you show as yearly cost under the minimum gas price -- A. (Interposing) Yes, sir.

Q. (Continuing) -- from that shown in each of your
129] other columns? A. That's right, for total operating costs, the difference in yearly cost would be those figures minus whatever figures you wish to know the difference between.

Q. I believe you said, Mr. Ramstead, that you are a gas equipment estimating engineer? A. Yes, sir.

Q. Is that your profession, does that mean that your business is estimating the gas consumption of gas equipment?

A. Not altogether. That's a --

Q. (Interposing) Part of it?

A. That's just part of it, yes, sir.

Q. Now in making this study to see the amount involved, did you make any study of the detriment or loss that Phillips Petroleum Company would suffer if it had to sell its gas at market price to these plaintiffs in these cases, over selling it at the same price to its purchaser?

A. No, sir, I have just made the estimate that you see here.

Q. You couldn't supply us any information about what loss, if any, Phillips would have by selling it to us instead of other people? A. No, sir, I could not.

130] Mr. Crowe: I believe that's all, your Honor.

Redirect Examination By Mr. Williams:

Q. I believe you stated the gas of the West Texas Gas

Company is not available in this area?

A. To the best of my knowledge, it is not.

The Court: All right, step aside.

(Witness withdraws)

A. M. RIPPEL, recalled as a witness on behalf of the defendant, resumed the stand and testified further as follows:

Redirect Examination By Mr. Williams:

Q. You are the same Mr. Rippel who was on the stand a few moments ago? A. I am.

Q. As part of your duties with the Gas Department of the company, do you have occasion to know of your personal knowledge the cost of the laying of gas pipe line?

A. Yes.

Q. Is that a part of your duties to know and estimate?

A. It comes to my attention practically every day.

Q. Is there an accepted standard in the gas business as to cost of laying gas lines, or rule of thumb by which you go? A. Yes, there is.

Q. What is that cost? A. The cost per mile of the gas pipe line, ditched and laid underground, the rule of thumb is that it's $2,000 per mile per inch diameter. Now the smaller pipe lines run a little more than that. I would say it would be in the range of $2,000 to $2,300.

Q. Per inch? A. Per inch per mile.

Q. In other words, a two inch pipe line would cost $4,000? A. That's correct, except it goes up a little bit on account of your ditching and laying costs are more per inch of diameter, but that's the rule of thumb and it's common knowledge.

Q. Average cost? A. That's correct.

Mr. Williams: I believe that's all.

Recross Examination By Mr. Crowe:

Q. I'd like, if I might, to ask Mr. Rippel: Have you ever made any studies to determine the loss or damage to Phillips if it sold us this gas instead of selling it to its

other purchasers? A. No.

Q. Can you think of any; what Phillips would lose if they sold to us at the same price as they would sell to other purchasers? A. That's a pretty broad subject. As far as money is concerned, if somebody paid us as much money as anybody else does, why there isn't any monetary loss on that transaction.

Redirect Examination By Mr. Williams:

Q. Mr. Rippel, there is a cost of installing meters, is there not? A. Oh, yes, sir, definitely that.

Q. Installing the connections, there is the cost of accounting? A. That's correct.

Q. Is there any risk involved in having individual connections at different places on your lines? A. Very definitely so.

Q. In the 9.8262 cents price, the field price, does that take into account the risk involved as to individual connections? A. No.

Q. The 9.8262 cents gas, in that testimony, that doesn't take into consideration the value of the gasoline, likewise that's in the line? A. That's in the line.

Q. Do you know the location of the pipe line of the Southwestern Light & Power Company? A. No, I'm not in that field. I do not. I believe it runs along the railroad but I just don't know.

Q. Irrespective of land descriptions, I will ask you if it is not a fact that that line runs from the city of Borger southwesterly from the city of Borger, I mean from the city of Guymon?

133] Mr. Crowe: If the Court please, he says he doesn't know. I don't think it's quite right for him to try to tell the witness when he says he doesn't know.

The Court: I think you can make that proof. He doesn't know.

The Witness: We had a lease that is close to the Southwestern Public Service, but don't know exactly where the pipe line runs. I believe it runs along the railroad but I don't know.

Mr. Williams: Can we stipulate that the line of the Southwestern Power do lead from the city of Guymon and go in a southwesterly direction?

Mr. Sweet: That's right.

Mr. Williams: And it's more than two miles from the nearest tract here involved.

* * * * *

Filed Dec. 8, 1955.

141] Transcript of Trial Proceedings.

Now on this 7th day of September, 1954, the above causes, being consolidated, came on for trial before Honorable Edgar S. Vaught, Judge, at Oklahoma City.

142] Appearances: Embry, Johnson, Crowe, Tolbert and Boxley, of Oklahoma City, and Tryon and Sweet of Guymon, Oklahoma, for the plaintiffs. Mr. Cecil C. Hamilton and Mr. R. M. Williams, for the defendant.

144] By The Court: Are the parties ready?

Mr. Tryon: The plaintiffs are ready.

Mr. Williams: The defendant is ready.

The Court: Before we start, I would like to make an observation. This is a good case for some good common sense and sound thinking, and I am inclined to think you gentlemen can get together and work out something here that will be satisfactory to all parties a good deal better than the Court can because you know all about it. You know so much more about it than the Court will know even when he gets through with this testimony. I don't know what efforts you have made to get along, to get together in this matter. I might say this, however, there is a Motion to Remand, isn't there?

Mr. Crowe: Judge Wallace denied the Motion to Remand and I would imagine the matter of jurisdiction is with you at all times.

The Court: The Motion to Remand will be denied then so the matter comes on for hearing. I don't know what effort has been made to get together to adjust this matter.

Mr. Williams: The matter has been the subject of much discussion, not only with these particular plaintiffs, but with other landowners in that area, this matter of furnishing gas for their irrigation purposes, and we feel it is perhaps impossible for the parties to get together because it is a matter of policy of the defendant company for a number
145] of reasons where it is not in a position to permit the use of gas for this purpose. Those reasons, of course, are matters without the veil of this particular lawsuit so the lawsuit comes to the Court on the legal rights of the plaintiffs to force the defendant to furnish the gas. It comes to the Court on behalf of the defendant for determination of its legal rights, in the premises. The only possible compromise that would be satisfactory to these plaintiffs would be the furnishing of gas, which, as I say to the Court, the defendant is not in a position to furnish for a number of reasons.

The Court: That was their gas originally, wasn't it?

Mr. Williams: Yes, sir, but these landowners contracted with this defendant that that gas would become the property of the defendant, hence, when it comes before this Court it is the property of the defendant by contract.

The Court: There is no question about that.

Mr. Williams: These plaintiffs reserved no rights they are now claiming.

The Court: That is true but these people up there want to irrigate. That is the only way they can make a living, you might say, on that land, and here is gas which comes from that land and they are willing to pay for it. There isn't any question on that and it seems the only objection that the company has to furnishing this gas is that it contravenes an established policy of the company in regard to the retail sale of gas. Now it seems to me that

this is such an unusual case, and from what you say it may apply to all in that area, that something should be worked out. All I know about the case is what I have learned from the pleadings. All of the pleadings allege that these connections were made by the company and that the wells were drilled with the knowledge of the company and that they were assured by a representative of the company who was on the scene that gas would be furnished them to operate these wells. The defendant's contention on that point is that while that may be true the man who said that had no authority to act, therefore, there was no agreement binding upon the defendant. That seems to be your lawsuit.

Mr. Williams: The pleadings go farther than that. The only instances where we have done it have been under written contract with the landowner, under certain specific terms and conditions. One in particular was for a one year period with the right of either party to terminate on thirty days' notice, which is very vital in connection with the position of the company that there be a time limit set and that they were only for temporary periods of time. There were other limitations about the use of the gas in those written contracts, and in this instance no such contracts have been made and are here involved.

147] The Court: Then you did connect your gas line with their wells.

Mr. Williams: In our pleadings we deny the Phillips Petroleum Company connected these irrigation wells for the taking of gas. In two of the cases, the evidence will show the field forces in anticipation of the possibility of the use of gas for these persons, did install a nipple or a short six inch service tube with a valve at the top of it in which a line could be connected but that the Phillips Petroleum Company did not connect that line into that valve. That was done in anticipation that a contract would be made between the landowner and the company, but it was never made, these people connecting themselves and then not coming to the company to sign the contract. In two instances, if your Honor please, the evidence will show their connections were made with their domestic fuel line leading from the well to their own house for use in their house, and that the matter of the connection of the irrigation wells with the domestic line was

never discussed with the Phillips Petroleum Company, and there was no participation by the Phillips Petroleum Company in the making of those connections. I think when your Honor gets into the evidence he is going to find this does not fit into any practice the Phillips Petroleum Company engaged in.

148] The Court: Very well. Proceed with the evidence.

Mr. Williams: May I say another word to the Court. What I said awhile ago was in order to keep the record straight as to the issues in the lawsuits and that you may not start into this lawsuit feeling that the defendant is taking an arbitrary position in this matter because there is a definite side to the matter of policy as distinguished from the mere matter of legal rights. The Phillips Petroleum Company has several hundred gas wells in the Panhandle of Texas and the Panhandle of Oklahoma. In this immediate area each one is located on a section of land. If the Phillips Petroleum Company is to let some of the landowners use gas for this purpose it has no justification or reason for not allowing all others who wish to use it. If these were the only cases that Phillips Petroleum Company had when it permitted certain lessors to use it in times past, it was thought to be a very minor matter and it would only be a matter of a very few lessors but when we are faced with the possibility of several hundred such requests then the volume of gas involved becomes staggering. The matter of system operation, which is operated on a delicate pressure plan becomes a difficult problem, the problem of the

149] Phillips Petroleum Company going into the business of selling gas for this kind of consumption, a thing that the Phillips Petroleum Company has never engaged in. We have had the charge made before other tribunals that the Phillips Petroleum Company, because of the eight instances in which it has done this, has made of itself a public utility, and assumes that obligation. This gas is all contracted for resale, and without the consent of the purchaser the Phillips Petroleum Company has no right to permit this use of gas. The gas here taken would be raw gas, unprocessed. The Phillips Petroleum Company has invested several million dollars in this area in the construction of gasoline plants to process this gas, and by its investment it has made a recovery of liquids, hence, this is a major problem. It is

not a matter of four gas cases, or four irrigation wells. It is a matter that could run into millions of cubic feet a day during unregulated periods over which we have no control, if it is a rainy day. When it is dry perhaps all the irrigation wells would be taking gas from our system, and the rain would come and the next day none of them would be taking gas from our system and it would affect the pressure balance of the system which is very material to the operation of a gasoline plant and the gas gathering system would be thrown out of balance. We have tried to work out some method. Now other fuel is available to people in that area. Butane
150] can be used by merely converting an engine. These wells can be operated with fuel oil and electricity, and all of those fuels are available to these parties, but in view of the magnitude of the overall problem this defendant faces, as a matter of policy it is not in a position to let these people have it without letting all of them have it, and I hope that perhaps gives the Court a little insight into the serious problem with which this defendant is confronted. We would be happy if we could possibly do something to accommodate these plaintiffs because we have no reason in the world not to want their cooperation. We want to do everything in our power to help them but we are confronted with an impossible problem if we attempt it.

Mr. Crowe: If your Honor please, the defendant in its answer pled the Statute of Frauds. We have not in our reply specifically pled to the Statute of Frauds and we have prepared a little amendment which we have furnished Mr. Williams and I would like to have leave to file it.

The Court: Very well.

Mr. Crowe: In Case Number 6015, brought in the name of Mayoe Porter Buster, and since the filing of the suit, Robert W. Buster, her husband, has acquired a half acre interest in that land and I would like permission -- we have furnished a copy to the Phillips Petroleum Company, for him to be made a party plaintiff, if there is no objection.

151] Mr. Williams: We would object because there is nothing to show this contract was made with Mrs. Buster. There is no showing he has any right to claim the benefit of any rights under the contract she might have had with the Phillips

Petroleum Company. They are injecting a new party into the lawsuit just before the trial.

The Court: Do you think it would be prejudicial to your interest in any way?

Mr. Williams: I haven't fully given consideration to the prejudicial feature except he is not a proper party.

The Court: It is alleged he is half owner; or owns an interest in the property. Leave will be granted.

Mr. Crowe: To make Robert W. Buster a party.

The Court: Will all the witnesses who expect to testify in this case stand and be sworn.

(Here the witnesses stand and are sworn by the Clerk.)

Mr. Crowe: There are four consolidated cases here and we would like to put our evidence in Case Number 6018, the Hitch Land and Cattle Company versus Phillips Petroleum Company, which was the first case filed in Texas County.

152] The Court: It is understood the evidence introduced as to any one will apply to all.

Mr. Crowe: All the cases, that is right.

ROBERT LEE, called as a witness by the plaintiffs, testified as follows:

Direct Examination

Q. (By Mr. Crowe) State your name.
A. Robert Lee.
Q. Where do yo live? A. Fifteen miles south of Guymon.
Q. In Texas County, Oklahoma? A. Texas County, Oklahoma.
Q. Are you familiar with the organization of Hitch Land and Cattle Company, a corporation? A. Yes, sir:

Q. Are you interested in it? A. I am a stockholder.
Q. Who is the president of the Hitch Land and Cattle Company? A. George Hitch.
Q. Is he here today? A. Yes, sir.
Q. Now are you familiar with the ownership of the
153] property described in this lawsuit?
A. Yes, sir.
Q. Does the plaintiff own the land described in that petition? A. Yes, sir.
Q. What is the description of the land owned by the plaintiff? A. The west half of section 34, 1-16 and the southeast quarter of that section, Texas County, Oklahoma.
Q. What is the nature of the business?
A. Farming.
Q. Is there a producing gas well on that farm?
A. Yes, sir.
Q. Where is it located? A. About the center of the section.
Q. Section 34? A. Section 34.
Q. Who is operating that gas well?
A. The Phillips Petroleum Company.
Q. The defendant in this case? A. Yes, sir.
Q. Does the Phillips Petroleum Company maintain an office in or near Texas County, Oklahoma?
A. One just across the line in Texas, yes.
154] Q. Is the Texas County area supervised out of the Texas office? A. Yes, sir.
Q. How far is it from the Oklahoma - Texas line?
A. Oh, less than a mile.
Q. Who was in charge of that office before and at the time you drilled? A. Dale Lewis.
Q. What is his position?
A. He was field superintendent.
Q. For the Phillips Petroleum Company?
A. For the Phillips Petroleum Company.
Q. Had you seen him there in that office on different occasions? A. Yes, sir.
Q. Now did the Hitch Land and Cattle Company drill an irrigation well on this section 34?
A. We wanted to drill one and George Hitch and I went to Dale Lewis's office --
Q. Wait a minute. Was one ultimately drilled?
A. Yes.
Q. Will you tell the Court whether or not you had any

conversation with Dale Lewis, the field superintendent of Phillips Petroleum Company, before you drilled the well?

A. Yes, sir.

155] Q. Where did that occur? A. In his office, at the Phillips' office.

Q. About when was it? A. That was in the latter part of January, 1953; 1953.

Q. Who was present? A. George Hitch, Dale Lewis and myself.

Q. Will you tell the Court what conversation you had with Dale Lewis at that time.

Mr. Williams: I don't think he has sufficiently shown the authority of Dale Lewis. He said he was field superintendent of Phillips Petroleum Company at this office.

The Court: Overruled. That will be determined later. Exception allowed.

A. (By the Witness) We told him we contemplated drilling an irrigation well if gas would be made available to us; if the Phillips Petroleum Company would make gas available to us. He said they would; that several farmers there were using gas for irrigation and named several of them and said they would sell us gas, and that there would be a contract to be signed, that there would be no use to sign the contract until we drilled the well and see if we had water and if we didn't have water, there wouldn't be any use to sign the contract, and if we did we could negotiate a contract later. There would also be a meter to install at a cost of $100.00. They didn't have a meter but while they would tie us onto the well, and would estimate the amount of gas used until we got a meter.

Q. That occurred before you started an irrigation well? A. Yes, sir.

Q. Was there anything said further at that time about drilling a well? A. We discussed -- I don't recall any other particulars right now.

Q. Did you see Mr. Dale Lewis after that before the well was drilled? A. I saw him on an occasion or two, on no particular business, but I would drop in and see him occasionally; see the boys over there. I know all of them, most of them.

Q. How long have you known Dale Lewis?

A. Three or four years; four or five years, something like that.

Q. Do you know whether he has any field men under his supervision or not? A. Yes, sir, he does.

Q. Would you know approximately how many in that area? A. I don't know; a good many of them but I don't know how many.

Q. How frequently would you see Mr. Lewis and his field men out there around your place?

A. Nearly every day, some of them.

157] Q. Now was the irrigation well later drilled?

A. Yes, sir.

Q. Do you know about when it was completed?

A. The first part of April.

Q. Of 1953? A. Of 1953.

Q. How far was the irrigation well from the connection with the gas well of the Phillips Petroleum Company and the gas well that is on your farm?

A. Oh, about, a little over half a mile.

Q. How did you arrange to get the gas from the gas line to that irrigation well? A. We put in a gas line.

Q. About how long a gas line.

A. Over 3,000 feet. I don't know the details on that.

Q. Does the tenant on your farm know the details of that?

A. Yes, sir.

Q. And he is here? A. Yes, sir.

Q. Now do you know whether or not the Phillips Petroleum Company sold any gas for the use of this irrigation well after it was completed? A. For this well?

Q. Yes. A. Yes, sir.

158] Q. How long did you take the gas?

A. We are still taking gas.

Q. You have been taking it since April, 1953?

A. Yes, sir.

Q. Have you paid the Phillips Petroleum Company?

A. Yes, sir.

Q. Up to what date have you paid them for the gas?

A. I believe the 1st of June. We have paid them on account. It was not a final settlement, necessarily.

The Court: I didn't get that.

A. I say we have paid them on account for the gas. We haven't had a final settlement.

Q. (By Mr. Crowe): Do you know what basis was used for the payment of the account? A. Well, the price was nine point eight, something.

Q. Per thousand cubic feet? A. Per thousand cubic feet, yes, sir.

Q. How has the volume of it been determined?

A. I do not know that. The tenant is taking care of all of that.

Q. Well, you understood the payments were made and accepted by the Phillips Petroleum Company without prejudice to the rights of any of the parties in this lawsuit, did you?

A. Yes, sir.

Q. How deep is the irrigation well you drilled?

159] A. Well, I believe it is about 400 feet.

Q. And how many acres have you been irrigating with it since you drilled it? A. A little over 300 I think.

Q. You know what part of the time the well is operated?

A. No, I don't.

Q. Mr. Logsdon would know? A. Mr. Logsdon would know that. I don't.

Q. As far as you are concerned, I will ask you when, if ever, you received any objection on the part of the Phillips Petroleum Company to your buying gas for irrigation purposes? A. We never had received any until July 24, 1953, when we received a letter from Mr. A. M. Ripple of Bartlesville.

Q. I believe that letter is attached there as an exhibit to the petition. Now did any employee of the Phillips Petroleum Company at any time raise any objection to the use of gas for irrigation purposes?

A. No, sir.

Q. Until that letter threatening to cut you off?

A. No, sir.

Q. Then following that letter this suit was filed?

A. That is right.

Q. Now, Mr. Lee, I will ask you whether you have observed any of the activities of Dale Lewis with reference to the Phillips Petroleum Company's business in that area?

A. He is the field superintendent and any time we

160] have any trouble or a gas line has a leak or roads are to be maintained or anything of that sort, we contacted Dale Lewis and he has always taken care of everything for us.

Q. In your dealings as a landowner and a lessor of the

Phillips Petroleum Company, have you ever had any dealings with any employee or officer of that company with authority above that of Dale Lewis? A. Does that cover leasing and all that sort of thing?

Q. He didn't negotiate the leases, I assume, but since production was obtained? A. Oh, no.

Q. Have any officers of the Phillips Petroleum Company had any dealings with you at all about those matters since the production? A. Not to my knowledge; no, sir.

Q. Do you know whether Dale Lewis has superintended the doing of the entire work in connection with the production of gas from your farm there with reference to leaks or anything else? A. So far as I know he has complete charge of all production in the field and oil maintenance in that area.

Q. What is your relation to George W. Hitch?

A. George C. Hitch?

Q. Yes, sir. A. Son-in-law and business partner.

Q. Do you have other land out there from which the Phillips Petroleum Company is producing gas?

A. Yes, sir.

161] Q. About how many wells do you have in which you are interested as a royalty owner and which are producing?

A. George Hitch and our partnership business, we have about eight and a half gas wells and the Hitch Land and Cattle Company, I don't recall how many they have.

Q. About how many acres do you and your father-in-law farm or have farmed in that area?

A. You mean in the partnership business or the Hitch Land and Cattle Company?

Q. In each of them. A. In the partnership business we farm a little over 2,000 acres, and I can't tell you in the Hitch Land and Cattle Company. I don't know. I will say we farm about 2,000 acres. That is the farming. Is that what you mean?

Q. That is right. You have tenants on it?

A. We have grass land and have a ranch but I was just talking about the cultivated land.

Q. Are you familiar with the spacing order of the Corporation Commission in that area as to how many wells can be drilled to the section? A. Yes, sir.

Q. How many? A. One.

162] Q. One gas well? A. One gas well.

Q. Do you have any other irrigation wells you operate in

Texas County besides the one involved in this lawsuit?
A. No, sir.
Q. The Hitch Land and Cattle Company has only the one?
A. They have some in Kansas.
Q. Are they using gas? A. Yes, sir.

Mr. Williams: I can't see the materiality of what they may be using someplace else, on land not involved here and in which the Phillips Petroleum Company has no interest at all in connection with the Kansas operations.

The Court: Well, I don't know the materiality of it but there is no jury here and if it is not material the Court will disregard it.

Q. (By the Court) Do I understand you only drilled one well? A. One well to the section.
Q. How many irrigation wells can you drill?
A. That is unlimited.
Q. There is no regulation on that?
A. No, sir, not that I know of.
163] (By Mr. Crowe) Approximately what did the Hitch Land and Cattle Company spend for the drilling of this irrigation well? A. About $14,000.
Q. Did you have any other expenses besides the well itself? A. The tenant, Mr. Logsdon, spent a considerable sum on additional equipment he had to use in irrigation farming.
Q. Mr. Lee, were you present at the time a hearing was had upon the Motion to Remand this case to the State Court? A. Yes, sir.
Q. A motion here in this courtroom?
A. Yes, sir.

Mr. Crowe: I would like at this time to offer in evidence Plaintiff's Exhibit 1, an exhibit heretofore offered by the Phillips Petroleum Company in connection with the Motion to Remand in these causes in which they compare the cost of gas and the cost of butane and propane and Diesel fuel and the cost of replacing Diesel fuel and so forth. It would be an exhibit which they prepared themselves, and I would like to offer it in evidence.

The Court: Very well.

Q. (By Mr. Crowe) Mr. Lee, I want to ask you whether or not there is any facility in that area for using electricity for operating the wells? A. No, sir.

Q. Are there any connections out there where you could use it, facilities there whereby you could get electricity?

A. There are high lines, yes.

Q. What is that, the REA? A. No, it is a public service company. It is in a town half a mile from there.

Q. As to the fuels shown here on Exhibit Number 1, I will ask you whether any of those would be available for your use there outside of butane and propane and certain Diesel fuel would be available. What would be the cost of conversion to a Diesel engine? A. $5,000.

Q. I believe the Phillips Petroleum Company by the exhibit shows butane and propane would cost ten times as much as natural gas. A. That is right.

Q. Do you know whether that is correct or does it cost more than that for butane and propane?

A. I do not know.

Q. I will ask you whether or not the Hitch Land and Cattle Company would have drilled this well and spent $14,000 or $15,000 expense if it had not been for the oral statements of Dale Lewis for the Phillips Petroleum Company?

A. They would not have. That is the reason we talked to
165] Mr. Lewis before we spent any money to see if the gas would be available.

Q. Did you rely upon his assurance in incurring this expense for the well? A. Yes, sir.

Q. That is all.

Cross Examination

Q. (By Mr. Williams) Mr. Lee, I understand from your testimony you went to the Phillips Petroleum Company's field office. That is at the Hansford Plant, is it not, across the line in Texas? A. Yes, sir.

Q. In late January of 1953? A. Yes, sir.

Q. You, together with Mr. George Hitch?

A. Yes, sir.

Q. And there you talked with Dale Lewis?

A. That is right.

Q. You asked him if gas would be available for irrigation fuel? A. Yes, sir.

Q. Did he tell you it would be or that he thought it

would be? A. He told me that it would be; that other farmers in the area were at that time using gas for fuel and as soon as they were ready they would tie us onto their gas well.

Q. But he told you that it would be necessary for you to have a contract with the company for that use?

A. That is right but not at the time they tied us onto the well.

Q. But you did find out it would be necessary to negotiate a contract with the company for the use of the gas?

A. We would sign a contract with the company. I presume that means the same thing.

Q. You would sign a contract with the company for the use of the gas? A. Yes, sir.

Q. Mr. Lewis did not purport to negotiate with you at that time the terms of such an agreement, did he?

A. No, sir.

Q. Did you have any discussion with Mr. Lewis as to the volumes you would take? A. Not to my knowledge.

Q. Did you have any discussion with Mr. Lewis as to the time over which this irrigation use would continue?

A. No, sir.

Q. Did you in those conversations obligate yourself or Mr. George Hitch of the Hitch Land and Cattle Company to take any particular volume over any particular time?

A. No, sir.

Q. It was a bare statement that gas would be available?

A. Yes, sir.

Q. You did not deem it important at all to determine the terms and conditions under which that gas would be made available? A. I assumed it would be made available indefinitely at the same price the other farmers were paying at the time.

Q. You knew the other farmers were taking gas under a contract with the company, didn't you?

A. No, sir.

Q. But you had no discussion with Mr. Lewis about those matters at all? A. No.

Q. He did tell you it would be necessary that meters be installed? A. Yes, sir.

Q. After you were there at that time you did drill and complete the well you say about April 1st or the early part of April? A. That is right.

Q. Did you go back to Mr. Lewis and negotiate a contract with the Phillips Petroleum Company? A. I was in

his office I think twice from January to April; not for that purpose but that was discussed.

Q. After the well was drilled did you get with Mr. Lewis
168] and negotiate a contract? A. No, sir.

Q. It was necessary, was it not, for Mr. Lewis to come to you? A. He did not come to me.

Q. He didn't come to you in July and talk to you about this matter of the contract? A. No, sir.

Q. He did not? A. No, sir.

Q. When did you see Mr. Lewis again about the matter after the well was drilled? A. I don't know if I saw him. I don't think I saw him until after the well was completed because not too long after that we got a letter from Mr. Ripple. I may have seen him in the meantime but I don't recall.

Q. You got a letter from Mr. Ripple on July 24?

A. That is right.

Q. Up to that time you had made no effort to go to the company to make a contract for use of this gas?

A. I talked to him twice between January and after the well was completed. After the well was completed I don't believe I talked to him.

Q. When you say you had problems of grease and roads
169] and operational problems you say you went to Mr. Lewis and he took charge of those problems?

A. Yes, sir.

Q. You said he appeared to have charge of the system on production on behalf of the Phillips Petroleum Company?

A. That is right.

Q. Those were all operational problems of the system?

A. Yes, sir.

Q. Did you ever have occasion to negotiate with Mr. Lewis or the Phillips Petroleum Company or anyone else other than the one conversation you have related when you asked if gas would be available? A. That is the only subject. That is the only reason, to my knowledge, we have directly with the production of the field.

Q. So far as you know Mr. Lewis never negotiated with anyone a contract for the use or sale or disposal of gas?

A. Yes, he made the arrangements with the other farmers and had put in connections for the use of gas and we thought gas would be available to us.

Q. The operational arrangements he made?

A. Supplying us gas.

Q. But he told you a contract would have to be made with the company for that purpose?

A. That is right. After we tied on, a contract would be signed. That is right.

Q. Did he tell you he would sign that contract and he
170] would make the contract? A. He didn't say he wouldn't or he didn't say he would.

Q. Didn't he tell you that contract was a matter that would have to be submitted to the Bartlesville office for its approval and execution?

A. I don't recall that was discussed.

Q. But you don't know of Mr. Lewis ever having signed the contract on behalf of Phillips Petroleum Company?

A. No, sir.

Q. And all you have ever observed him doing has been the physical operation of the lines to the well?

A. That is right.

Q. I believe you made the statement that the Phillips Petroleum Company had been selling you, and I believe you used the word "sold" or was selling this gas since April 1. You mean by that, do you not, you had been connected since about that time? A. Phillips Petroleum Company connected us at that time, yes.

Q. The only elements of sale present, are those you have heretofore testified about? A. That is right.

Q. Did the Phillips Petroleum Company, to your knowledge,
171] actually connect the irrigation and fuel line with the Phillips' line? A. I was not present at the time. Mr. Logsdon was. I wouldn't know.

Q. You wouldn't know about that? A. That is right.

Q. You said you had paid for the gas so taken and used it to August 1 of this year?

A. We have made a payment on account, yes, sir.

Q. And it was clearly understood, was it not, that was without prejudice to the rights of any party to this lawsuit?

A. Yes, sir.

Q. And it was made to be later recalculated as to amounts and volumes? A. Yes, sir.

Q. You admit, in any event, you owe for the gas you have heretofore taken? A. Yes, sir.

Q. And the payment was made and accepted on that basis and that basis only?

A. Yes, sir.

Q. And that was only made within the last ten days,

was it not? A. Yes, sir.

Q. Now then these other fuels are available. It is only
172] a matter of cost, isn't that true?

A. I believe they would be available unless it would be the electricity. I don't know about that.

Q. There is a public service highline?

A. Within half a mile, I think.

Q. That is a less distance than your gas fuel lines from the gas well to that irrigation well?

A. Yes, sir.

Q. To use electricity it is merely a matter of installing a motor instead of a gas engine, isn't it?

A. I don't know. I presume so but I don't know.

Q. Butane and propane are available, except it is just a matter of cost? A. Yes, sir.

Q. And Diesel fuel is available?

A. Yes, sir.

Q. Fuel oil would also be available, wouldn't it?

A. I don't know about that.

Q. (By the Court) Do you know what the cost of fuel oil would be compared with natural gas?

A. By fuel oil do you mean Diesel oil?

Q. Diesel oil?

173] A. No, I don't. It is on that exhibit but I don't recall.

Mr. Crowe: I think it is about ten times.

A. (The Witness) I believe it is about ten times the price of gas.

Mr. Williams: That is all.

Redirect Examination

Q. (By Mr. Crowe) Mr. Lee, I believe you say you saw Dale Lewis twice you think between January and April of 1953?

A. Yes, sir.

Q. I want to ask you if he ever offered you any written contract to sign? A. No, sir.

Q. Did you have any discussion with him about it?

A. If we did it was only casual. I don't recall.

Q. I will ask you if you at all times have been willing and able to pay the field price for the gas you used?

A. Yes, sir.

(Witness excused)

GEORGE HITCH, called as a witness by the plaintiff, testified as follows:

Direct Examination

Q. (By Mr. Crowe) What is your name?
174] A. George Hitch.
Q. Where do you live? A. Guymon, Oklahoma.
Q. What is your relation to the Hitch Land and Cattle Company, a corporation? A. President.
Q. Are you also a stockholder? A. Yes, sir.
Q. How long have you lived out in that country?
A. Sixty-six years.
Q. In times gone by I assume you have done dry farming in that area, is that right? A. Stock raising and farming.
Q. How long has there been irrigation in Texas County to any extent? A. Between five and ten years.
Q. (By the Court) How much land does the Hitch Land and Cattle Company own in Texas County, approximately?
A. Oh, about half a section there in that one spot.
Q. Half a section? A. Yes, sir, including this other section, right in that one spot.
Q. (By Mr. Crowe) Is that in Section 34?
A. Yes. That is in 34 and we have got a little land over
175] in another section but not under irrigation.
Q. Is there a gas well producing gas in that section in which the plaintiff owns an interest?
A. Yes, sir.
Q. How many wells? A. One.
Q. Who is producing it?
A. The Phillips Petroleum Company.
Q. Do you know Dale Lewis? A. Yes, sir.
Q. Did you know him back in 1953? A. Yes, sir.
Q. How long have you known him?

The Court: I am not hearing anything the witness says. The Court has to pass on this testimony, and if you do not talk loud enough to be heard it does not amount to anything.

Q. (By Mr. Crowe) How long have you know Dale Lewis?
A. Three or four years.
Q. What is his position with the Phillips Petroleum Company? A. Field superintendent.
Q. For what area? A. Well, our area there where we live.
Q. Where is the plant? A. About three or four miles southwest from our operations.
Q. Now did you have any conversation with Dale Lewis
176] about an irrigation well before you drilled it?
A. Yes, sir.
Q. About when was it? A. January, 1953.
Q. Who was with you? A. Bob Lee.
Q. He is your son-in-law?
A. Yes, sir.
Q. Was anyone else present? A. Just myself, Dale Lewis and Bob Lee.
Q. Now will you tell the Court just what conversation took place at that time? A. When we first decided to dig the water well the first thing to do was to see if we could get the gas and Lee went to Mr. Dale Lewis and he told us we could get the gas and that was about all there was in that conversation about the well. Later on about the first of February, I went to Florida and was going to dig the well when I came home about the first of March. He had already told us to go ahead and dig the well. That was in the first conversation. He told us to go ahead and dig the well and see if we had water; th there was no use of making a contract until we seen whether we got sufficient water. Then we let it go on until I got back from Florida along in March. I don't remember the exact date, anywhere from the seventh, and we went to digging this well and got through a few days after the first of February, and then they had already told us when we got through with the well to let them know and they would come over and tie us in, the Phillips Petroleum Company representatives.
Q. Was there any discussion about a meter?
177] A. Yes.
Q. What was that? A. That he would put a meter on later.
Q. Was anything said about the expense of it?
A. Yes, sir, a $100.00.
Q. That he would put it on?
A. Mr. Dale Lewis said the Phillips Petroleum Company would put it on.
Q. Who was to pay for it? A. The Phillips Petroleum

Company. -- No, we was to pay for the meter but they was to put it on.

Q. Did they ever put a meter on? A. No, sir.

Q. Did you have any conversation with them about how you would measure the volume of the gas until the meter was used? A. Up to that time we was to keep track of the hours we operated the engine and estimate it until we got the meter on.

Q. What portion of the time were you out there while
178] the water well was being drilled?

A. I was out there pretty much of the time, from the time we started until we got the well completed and ready to pump, then I was there all the time.

Q. Did you pay for this water well on behalf of the corporation? A. Yes, sir.

Q. What did you pay for it? A. In the neighborhood of $14,000.

Q. Have you paid the Phillips Petroleum Company for the gas or any of the gas that you have used?

A. We sent them a check payable to, I believe, up to the first of June, this year. We tried to do the best we could in figuring out what we had used and sent them a check.

Q. Do you remember what basis you used for the calculation? In the first place, what price did you calculate it on?

A. Oh, I suppose we figured it like they were doing, 9.862 or something like that.

Q. Then you computed the hourly consumption?

A. According to the hours we ran the engine.

Q. Now then, would you tell us whether or not in the drilling of this irrigation well you relied upon the statements and representations of Mr. Dale Lewis?

A. I sure did.

179] Q. Would you have drilled the well otherwise?

A. No, sir.

Q. Upon what did you rely in spending the $14,000.00 you spent? A. On buying gas from the Phillips Petroleum Company.

Q. Have you always been willing and able to pay the field price for the gas? A. Yes, sir.

Q. And you are now? A. Yes, sir.

Q. Did you spend anything or did this corporation spend anything for additional equipment to use in its irrigation or did Bill Logsdon pay anything toward that expense?

A. We just spent the money for the machinery and he spent

the money for the additional farming equipment that was not included in the $14,000.

Q. Did you include in that expense the 3,000 feet of gas pipe line that was laid down to the gas well?

A. Yes, sir.

Q. Was it necessary to construct irrigation ditches to be used for irrigation? A. Yes, sir.

Q. Who did that? A. Bill Logsdon.

Q. Was that done after the conversation with Dale Lewis about the furnishing of gas?

A. Yes, sir.

Q. Now Mr. Hitch, did you ever talk to Dale Lewis anymore about this matter except the one conversation, that you remember? A. Not until after we got the letter from Ripple and then we went by to see him.

Q. Did you have a conversation with him at that time?

A. Yes.

Q. What was it? A. He said they couldn't give us a contract; that they were going to have to cut off, and that was just about the size of it.

Q. Did he express any regret about it?

A. Yes, he said he was sorry but it had to be done.

Q. (By the Court) What reason did he give?

A. Well, anymore than the company had ordered him to cut us off he didn't give the reasons.

Q. (By Mr. Crowe) Did he ever tender to you a proposed written contract covering the sale of gas or did he ever offer you one to sign? A. No, he never offered me one. He talked about getting one but he didn't have the forms at that time.

Q. He told you he didn't have the forms?

A. At that time.

Q. Did he ever produce any forms after that time and show them to you before you got this letter from Ripple about cutting the gas off? A. No.

Q. That is all.

181] Cross Examination

Q. (By Mr. Williams) Mr. Hitch, you know that Mr. Lee went to Dale Lewis's office and had this conversation in the middle of January, 1953? A. Yes, sir.

Q. I believe you asked him if gas would be available for fuel for irrigations purposes? A. That is right.

Q. He said, according to you, that it would be?
A. It would be.
Q. And I believe you said that was about all that was said at that time? A. You are talking about January, 1953?
Q. Yes, sir. A. We asked him before we ever dug the well.
Q. Before you dug the well? A. If they would sell us gas. He said they would, that there wouldn't be any doubt but what we could get the gas from the Phillips Petroleum Company.
Q. But he did tell you it would be necessary that there be a contract? A. But not to wait for the contract to tie us in, but to dig the well and see if we got water, and then tie us in and they would give us a contract.
Q. They would then make a contract with you?
A. Yes, sir.
Q. Did you discuss with him the terms of the contract? He didn't show you one, did he? A. No, sir.
Q. You didn't discuss with him any matter of time which it would cover, one year, two years, three years or five years? A. No, sir.
Q. Did you discuss with him the number of acres of land you were going to irrigate and what kind of crops you were going to put in? A. He didn't ask us.
Q. You did not discuss with him the volumes of gas you might need for that purpose? A. No, sir.
Q. Did you agree with him you would take a certain volume of gas for a certain period of time?
A. He never asked us.
183] Q. And you never volunteered that?
A. No, sir.
Q. The only thing that was said was, was that you could have the gas and the contract would be entered into later? A. Yes, sir.
Q. He told you, did he not, that contract would have to be one that would have to be made through the Bartlesville office? A. No, sir.
Q. He didn't tell you that? A. No, sir.
Q. When did you next see Mr. Lewis?
A. After I got this letter from Mr. Ripple in July.
Q. July 24 you received it, I believe, Mr. Lee said. Is that about correct? A. That is about right.
Q. The letter was dated July 23 and that conversation with Mr. Lewis, I believe was in his office?

A. That is right.

Q. And you told him you had that letter?

A. Yes, sir. Said he had gotten one too.

Q. He told you at that time he had instructions from the company that no contract would be given for the Hitch well? A. And was going to cut us off.

Q. That is the sum and substance of the conversation you had with Mr. Lewis in regard to this matter?

A. Yes, sir.

Q. (By the Court) Have you had any other conversations
184] with him? A. Not anything else unless it was a visit, things that didn't amount to anything; not along this line.

Q. When you got the well completed and you used that pipe line, who made the connection?

A. The Phillips Petroleum Company or their men.

Q. (By Mr. Williams) Were you present at the time the fuel line was connected to the Phillips Petroleum Company line? A. No, sir.

Q. And then anything that you know about that is something that someone must have told you, which would be hearsay.

A. I know they come out and tied us in and somebody paid them. We didn't pay them and they would not have tied us in for nothing.

Q. But you were not present? A. No, sir.

Q. You did not see an employee or agent of the Phillips Petroleum Company make the connection of your irrigation fuel line to their equipment? A. Mr. Bill Logsdon took charge from then on and he attended to that.

Q. But you just don't know personally?

A. I know that somebody tied us on. We didn't.

185] Q. Now in your testimony you said something about the matter of a meter, the estimation of hours. When did that conversation take place and with whom did you have it?

A. I think we talked that over in January, 1953, before we dug the well.

Q. That was in this one conversation you had with Mr. Dale Lewis in January? A. Yes, sir.

Q. After the well was drilled you said you didn't hear from the company until July 24 when you received that letter. Did you during that period of time go to the Phillips Petroleum Company and inquire of them as to the contract for the use of this gas? A. No, we didn't.

Q. You were continuing to use the gas in the meantime?

A. Yes, sir. We were going to pay them for it.
Q. You knew that no meter had been set?
A. Yes.
Q. Had a price been agreed upon?
A. No, sir.
Q. No price had been agreed upon?
A. But we understood it would be the field price there.
Q. That isn't what Mr. Lewis said. You just understood that. The price wasn't discussed in your conversation?
A. I don't think so.

186] Redirect Examination

Q. (By Mr. Crowe) You thought you would pay the Phillips Petroleum Company the same price they were paying you? A. Yes.

(Witness excused)

BILL LOGSDON, called as a witness on behalf of the plaintiffs, being duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Crowe) State your name. A. Bill Logsdon.
Q. Where do you live? A. At Hitchland, Texas.
Q. Is that a town named after the Hitch family?
A. I think so.
Q. Do you farm any of George Hitch's land?
A. Yes, I do.
Q. Under what circumstances do you farm it, as a tenant or partner? A. As a tenant.
Q. And also you farm land owned by the Hitch Land and Cattle Company? A. Yes, sir.
Q. Were you farming it back in 1952 and '53?
187] A. Yes, sir.
Q. How long have you been renting that land?
A. Since 1944.
Q. Now in those days did you have any irrigation wells on it? A. No.
Q. You did dry farming, is that right?
A. Yes, sir.

Q. How many wells do you have on the land now owned by the Hitch Land and Cattle Company? A. We have one well.

Q. How many gas wells are on the section?

A. On the section the well is on?

Q. Yes. A. There is one.

Q. Were you there when arrangements were made for the drilling of the well and during its drilling?

A. Yes, sir.

Q. Will you tell the Court in general, about the depth of the well and the kind of equipment that is in it and when it was necessary to connect it up with the gas line?

A. The well is about 360 feet deep. We have a pump on the well set at 270 feet deep. We have an eight inch pump and then sixteen inch casing, perforated casing; gravel along the casing. Then we have a gear head on top. The pump in the well, 270 feet, and the gear head on top of the well and then a gas motor there at the side.

Q. Do you remember about how many carloads of gravel you put out around the casing? A. About four semi-trailer loads. I think that will figure two boxcar loads.

Q. About how much water do you have available in the well? Do you know what its capacity is?

A. We have approximately a thousand gallons a minute.

Q. Have you been irrigating with it since you drilled it?

A. Yes, sir.

Q. How many acres did you irrigate in 1953?

A. Approximately a half section.

Q. In 1954? A. The same amount.

Q. Now Mr. Logsdon, did you have anything to do to the land in order to be able to irrigate it?

A. Yes, we had to level it.

Q. Did you have any expense in connection with that?

A. Yes, sir.

Q. About how much did you have in the way of expense in leveling the land and ditching it and buying equipment to do it with?

A. I would say about $15,000 additional equipment plus what they spent on the well.

189]

Q. Now at the time you bought that equipment did you know what arrangements that Mr. Lee and Mr. Hitch had or claimed to have had with Dale Lewis? A. Yes, sir.

Q. You were not present at the conversation?

A. No, I wasn't.

Q. What was necessary to connect the irrigation well

with the gas line?. A. We had to dig a trench or a line about 35 feet along.

Q. How deep? A. Approximately two feet, and laid a one-inch line over to the gas well.

Q. Did you see any of the Phillips Petroleum Company's employees there while you were laying that line?

A. Yes, sir.

Q. How often would you say they were there during that time? A. Well, it only took about two days to lay the line and I guess I was only there once.

Q. As you brought the line up to the Phillips Petroleum Company's gas line, what did you have at the end of that part of the conduction? A. We had a little home-made, what they call a drip up to their line there at the well.

Q. How do you get from the two feet depth up to the gas line? Did you have an elbow there, a pipe?

A. Yes, sir.

190] Q. How high is the gas line above the ground, about?

A. About four feet.

Q. Did you complete the installation of this pipe, so far as the line is concerned, the elbow and the drip?

A. I completed it above the ground. The drip is buried in the ground two feet deep.

Q. When you completed your work was that line connected with the Phillips Petroleum Company's gas line?

A. No, sir.

Q. Did you have any conversation with any employee of the Phillips Petroleum Company about connecting it?

A. I did.

Q. Who was it? A. Donald Torry.

Q. Who was he? A. I don't know what they call him. He was a line walker. He checked the gas wells through that community.

Q. You knew who he was, did you? A. Yes, sir. He worked for me and others when he wasn't working for Phillips.

Q. You gave him that time? A. That employment.

Q. How long have you know Donald Torry?

A. As long as he has had that job; I don't know whether

191] he worked at the plant before he had that field job or not.

Q. When did you see him with reference to the time you got your work completed? A. The afternoon we were putting the line through the slush pit. We started at the well laying the line to that irrigation well and came up to the gas well

and when we were going through the slush pit in going to the gas well, he drove up there in his jeep.

Q. Did you have a conversation with him?

A. Yes, sir.

Q. What did he say? A. He asked us if we were about ready to tie on. I told him "yes", and he gave me some information about how to wrap that pipe to go through the slush pit. He said they used some kind of acid that would eat that pipe up. I told him we were about ready to tie on. He went over to the road and talked to the plant and said that the Logsdon line was about ready to tie his irrigation well on. I don't know who he talked to, but whoever he talked to -- I could hear him over the intercommunication radio -- I am getting a little ahead of myself. There is another tap at this well that belongs to Homer Simmons that he heats his house with.

Q. By tap you mean a tap into the gas line?

A. Into the gas well. He asked the fellow at the plant
192] if he wanted to tie into Homer Simmons's tap and this fellow at the plant said no, if I wasn't in a hurry that they would send a welder over tomorrow and put in a separate tap. He asked me if I was in a hurry and I said no, I wasn't in a hurry and he left.

Q. Torry left? A. Yes, sir.

Q. Was that about all the conversation you had with him at that time? A. Yes, sir.

Q. What did you do the next morning?

A. The next morning when I got up, when I went outside I looked at the well, just about half a mile from my house, and there were two pick-ups there and this welder was welding a coupling onto the gas line and he went ahead and welded the coupling and I had some pipe there I was going to put in over to my regulator, and this fellow, Donald Torry, was there. They said they had some high pressure pipes and they would go ahead and put that in over to my high pressure regulator which cuts it down to fifty pounds in my line. They used that pipe and hooked it on.

Q. Did you participate in any way in hooking the gas on?
193] A. I was there but I had no wrenches.

Q. Who was this welder they brought out?

A. It was the Rice Welding Company.

Q. Do you know whether that company does welding for the Phillips Petroleum Company? A. I do.

Q. Do they? A. Yes, sir.

Q. (By the Court) Did you employ the welder?
A. No, sir. I didn't know who they were going to send out. We didn't employ him and we didn't see him.
Q. Who did employ him? A. As far as I know the Phillips Petroleum Company did. I don't know.
Q. The connection was made then with the Phillips Petroleum Company? A. Yes, sir. They turned the gas on. He turned it on and checked my regulator there.
Q. (By Mr. Crowe) Have you been using gas from this Phillips Petroleum Company line from that time up to now?
A. Yes.
Q. For irrigation purposes? A. Yes, sir.
Q. What was that date? A. The date we first started to use it?
Q. Yes, sir. A. April 9, 1953.
194] Q. Now about how frequently would you say representatives of the Phillips Petroleum Company had been down there since April 9 and seen you taking gas for this irrigation well?

Mr. Williams: I think the witness should identify who he means by representatives of the Phillips Petroleum Company.

The Court: He can state what he knows.

A. (The witness) Well, I don't know how often they checked those gas wells.
Q. (By Mr. Crowe) Have you seen employees of the Phillips Petroleum Company down there since April 9?
A. I see employees of the Phillips Petroleum Company every day.
Q. What are they doing on the days you see them?
A. Well, they are checking these gas wells. I guess checking the gas wells and the lines, and have been down there and changed some boxes that were in my way for the irrigation ditch. They came down and checked that.
Q. Did they know you wanted them changed?
A. Yes, I asked them.
Q. Do you remember who that was? A. I don't know his last name but he has the job now that Donald Torry had. His first name is Kenneth.
195] Q. Were those Phillips Petroleum Company boxes that were in your way? A. Yes, sir.
Q. Did they move them? A. Yes, sir.

Q. How long were they down there doing that?
A. Oh, they were there one afternoon I believe; one day.
Q. Is the connection there to the Phillips Petroleum Company's gas line obvious to anyone with the naked eye?
A. Sure. It is sticking up above the ground there, the cut-off and the high pressure regulator.
Q. I want to ask you whether at any time since the ninth day of April until this letter was written by Mr. Ripple in July if any employee of the Phillips Petroleum Company ever objected or protested to you using the gas for this irrigation?
A. No, sir.
Q. I want to ask you whether or not you, in the purchase of this irrigation equipment you bought, whether you relied upon what you had heard as to Dale Lewis's representations that the gas would be avaiable? Did you rely on that in buying that equipment? A. I sure did.
Q. Would you have bought it otherwise?
A. No, I would not have bought it if we had not drilled our irrigation well and tied onto this gas, no.
Q. This equipment you speak of, approximately $15,000,
196] is that yours? A. That is mine. I bought it. I farm the land just exactly like I did before we had the irrigation well; furnish the equipment and the seed and the labor.
Q. (By the Court) You furnish everything?
A. Yes, sir.
Q. Then you give the landowner a part?
A. Yes, sir, I give him a third.
Q. You haven't given him much this dry weather have you?
A. No, I haven't.
Q. But that was your outlay? A. Yes, sir.
Q. (By Mr. Crowe) Would you just give us a little description of that equipment. A. I bought an MMU tractor cultivator with fertilizer attachment which amounted to about $6,000. I bought a John Deere combine which I could have used on dry land farming if I had any dry land which amounted to about $5,500. I bought a George Eberman land leveler which cost about $1,200. I bought a ditcher which cost about $400.00. I bought an extra pick-up to take care of this irrigation well. I bought irrigation tubes and pipes and other things that would run approximately $500.00, I imagine. I bought a tandem disc that cost $1,100 and some odd dollars for irrigation purposes. I just completely changed my farm for irrigation.
Q. You changed your equipment almost completely. You say
197] this is a fifty pound pressure line up to the irrigation well? A. Yes, sir.

Q. It doesn't have any connection with any domestic line? A. It goes directly to the irrigation.

Q. About what portion of the time have you operated this irrigation well since April 9? A. We operated from April 9, 1953, until sometime in September, 1953, when we were shut off in the winter time and started operating again this last winter in January and have operated it almost continuously since then.

Q. How many hours a day do you operate?

A. Twenty-four hours a day, seven days a week.

Q. And have you used the gas to just about the capacity of the engine to run it full time during the farming season?

A. The engine runs wide open all that it will pull. I think we are using all that motor will burn of natural gas.

Q. From September, 1953, until January did you use the irrigation well much? A. No, not too much. We could have used it but I was preparing some land, leveling it and one thing and another and we just didn't use it much from September until January.

Q. Would it be a seasonal operation, say part of the
198] time you used full capacity and then maybe there would be some of the time you wouldn't use it all.

A. I think that depends on the rainfall out there and the last five years it fell a way under normal.

Q. You say you operated twenty-four hours a day. What length rows do you irrigate at a time?

A. Well, that depends. Right now we are running water half a mile down the road.

Q. How long does it take you to irrigate?

A. Forty-five tubes for twelve hours will get down to the other end.

Q. Does that mean you change the irrigation twice?

A. Every twelve hours and check the well about every six hours. We check it around ten o'clock every night to see that we are not wasting water.

Q. Has it proved to be a profitable operation?

A. Yes.

199] Q. Mr. Logsdon, what consumption per hour did you calculate the quantity and volume of gas for your place in the accounting you made with the Phillips Petroleum Company? A. We based our figures on another well that is under contract with Phillips that has a meter on it. That is a larger well than ours and over a period of time they figured it used 500 cubic feet an hour and that is the way

we figured out well. That might not be exactly right but until they put a meter on there that was near as we could get it.

Q. That would run about how many cubic feet a day? Did you calculate it? A. I did. It was 500 times 24.

Mr. Crowe: That is all.

Cross Examination

Q. (By Mr. Williams) Mr. Logsdon, you had no conversations with Mr. Dale Lewis whereby he made any statements or agreements with you as to the use of this gas?

A. No, sir, not before we built the well.

200] Q. You relied upon what Mr. Lee and what Mr. Hitch told you as to what Mr. Lewis told them?

A. Yes, sir. I had relied on them for several other things before that, as long as I had been farming their land.

Q. There is other fuel available in that area by which you could power this irrigation pump? A. Yes, sir.

Q. And the only difference between that and this is the matter of the cost? A. Yes, sir.

Q. You say you participated in the calculation in the amount of payment that was made to the Phillips Petroleum Company on account of the gas taken. A. Yes, sir.

Q. For that entire period of time, from April 1, 1953, to June 1, 1954, according to your calculations, the payment was $152.36, is that correct? A. Yes, sir.

Q. Your total fuel bill for that time?

A. I don't say that was the total bill. If the Phillips Petroleum Company would put a meter on that well, we are willing to pay for exactly what we used but we had to arrive at some figure. If that is not enough and if they put a meter on there we are willing to pay more.

Q. That is all.

201] (Witness excused)

JOHN WELLS, called as a witness on behalf of the plaintiff, testified as follows:

Direct Examination

Q. (By Mr. Crowe) State your name.
A. John Wells.
Q. Where do you live? A. I live fifteen miles south of Guymon, Oklahoma.
Q. By whom are you employed? A. The Phillips Petroleum Company.
Q. How long have you been working for the Phillips Petroleum Company in the area where Texas County is?
A. Approximately ten years.
Q. Who is your superior? A. Mr. Lewis.
Q. That is Dale Lewis? A. Dale Lewis.
Q. Is he field superintendent for the Phillips Petroleum Company is that area? A. We call him area superintendent.
Q. Mr. Wells, are you familiar with the Timmons well which is in the section where the Hitch Land and Cattle Company's property is? A. I know where it is, yes, sir.
Q. Could you tell us what the capacity of the Timmons well is? A. No, sir.
Q. Do you have any idea? A. Not now, no, sir.
Q. What was the original potential of it?
A. I wouldn't volunteer to say. I can't remember.
Q. Do you have anything to do with checking the delivery of gas from those wells? A. No, sir.
Q. Who does? A. Well, that is a question -- they have a testing group that tests the wells.
Q. Is there anybody here for the Phillips Petroleum Company in the courtroom today who knows about the deliverability of gas from those wells? A. Not to my knowledge, on this particular well right now.
Q. I would like to have the potential.
A. I don't know.
Q. Do you know what the allowable is?
A. No, sir.
Q. Would you know it has a deliverability of more than a million cubic feet of gas a day? A. No, sir.
Q. You don't even know that.
Q. Did you ever hear what the capacity of those wells
203] were when they were brought in, any of them?
A. Yes, sir.
Q. Do you know what the area or range is in the deliverability of gas from wells in this area, the Timmons, Knott, the Place and Mayoe wells? A. No, sir.
Q. That is all.

Mr. Williams: No questions.

(Witness excused)

DALE LEWIS, called as a witness by the plaintiffs, testified as follows:

Direct Examination

Mr. Williams: I don't know the purpose of this but if it will help you, I have in my file a sheet that was made up for me showing the allowable and production for the well over the period in question.

Mr. Crowe: I would like to have it for the Timmons, Knott, Place and Mayoe wells.

Mr. Williams: I might say to you the reason Mr. Wells didn't know about these wells, these Oklahoma wells are not within his area of operation at all.

Mr. Crowe: That is all, Mr. Lewis. I offer in evidence Plaintiff's Exhibits 2, 3, 4 and 5 which are the records of these gas wells.

(Witness excused)

204] Mr. Crowe: I believe that is all of our testimony in the first case.

Mr. Sweet: We would like to direct the testimony to No. 6015.

Mr. Williams: Before we get into the testimony in the next case, I am going to seriously urge the Court to dismiss on the grounds for failure to present proof to show any right of relief in the plaintiffs. The reason I suggest that at this time is, I think it is agreed by everyone, this is probably the best case they have. They wanted to try it first wherein they allege, and they have made proof to a greater extent than they could make in any other case, and we might save a lot of time if we at this time presented our motion to dismiss and

argue the legal matters, because, admitting all they have attempted to show, they have not proven facts sufficient to entitle them to relief at the hands of this Court. I believe in a brief argument we could demonstrate that to your satisfaction.

The Court: You have got the one situation here. We had just as well be frank. Of course, you contend that Lewis had no authority to make any agreement or contract.

Mr. Williams: Even if we admit he had the authority to do exactly what he did, and he did and said what they say he did and said, they are still not entitled to relief in this lawsuit. What type of injunction is this Court going to grant?

205] The Court: I am taking the extreme view for the purpose of this argument. You have a situation where they went to him and said, "We want to drill this irrigation well but we will only do it if we are assured you will furnish us the gas." He says, "All right, we will furnish you the gas and we will prepare a contract." What kind of a contract, and the contract was to carry out the details of this agreement they had made.

Mr. Williams: What are the details of this alleged agreement?

The Court: That is something that could be easily determined, the amount of gas to be used and the price of gas, but their contention is they were induced to spend $14,000 for the drilling of a well, and about $15,000 for equipping the farming end of it to take care of the irrigation. That is something like $30,000. They said, "We will not do this unless we are assured we can get the gas." Now it seems to me under their theory, the only question that could be covered by a written contract would be the details of how much gas they were to get and the price of the gas.

206] Mr. Williams: But that is what the courts says is essential in any valid contract, the detail of price. That is a material element. Who is going to decide that price? Is the Court going to write a contract for the parties?

The Court: What kind of price would they be expected to charge? They were paying this farmer for his royalty. They were paying him so much for the gas. That would be one basis for determining it and the price they were charging somebody else would be another basis for determining it.

Mr. Williams: But because we sell gas to someone else, does that mean we automatically offer it to these parties?

The Court: It might be a basis for a contract, for somebody in that community.

Mr. Williams: Who is going to write the contract? Is this Court?

The Court: We have written contracts sometime. We don't like to do it.

Mr. Williams: Question Number Two. What is the time element? How long is the contract going to be?

The Court: How long are they going to get gas from that well? That gas is coming from this farm. They own it. They gave you a lease to produce it. You say go ahead and drill your well and we will furnish you the gas, so it might be a question for the Court to determine as to what price you paid for the gas in view of the prices that are charged around there but for you to come out and say, now "We have decided we are not going to furnish any gas at all."

207] Mr. Williams: Another question for the Court to think about is the question of mutuality. The courts have held there must be mutuality. These gentlemen have agreed to no time. They can discontinue taking as tomorrow. This defendant has no regress against these plaintiffs.

The Court: They would be very foolish to drill a well and say we will not take any gas. Let's proceed with the evidence.

MAYOE PORTER BUSTER, one of the plaintiffs, called as a witness, testified as follows:

Direct Examination

Q. (By Mr. Sweet) State your name.
A. Mayoe Porter Buster.
Q. You are one of the plaintiffs in Cause No. 6015?
A. I am.
Q. You are the wife of Robert W. Buster?
A. I am.
Q. Do you and your husband as tenants in common own the
208] northeast quarter of section 28, township 2 north, range 15, Texas County? A. We do.
Q. What is the business in which you and your husband are engaged? A. Farming.
Q. Do you do both dry land and irrigating farming?
A. We do dry land farming and irrigation.
Q. How many irrigation wells do you have?
A. We have two.
Q. And two separate farms? A. On the quarter on which we live we have an irrigation well which we drilled in approximately '48 and that is that Skelly. At that time when we decided to drill an irrigation well, we talked to Skelly and they said to go ahead so we drilled the well and have been using Skelly gas. Since then and every six months Skelly calls us and asks us how many hours the well has been running and we figure that and tell them how many hours the well has been running and they figure that from that basis and bill us and we pay them, and they have been very nice and never said anything --
Q. (By the Court) Where is your other well, your second well? A. The Phillips Petroleum Company, it is four miles directly south of our home.
209] Q. Is that on a quarter section? A. That is on a quarter section.
Q. (By Mr. Sweet) You have a quarter section, two different sections? A. That is right.
Q. One section is four miles from the other?
A. Yes, sir.
Q. Your home, I believe, is located on the tract supplied by the Skelly well? A. By the Skelly well.
Q. The well involved in this lawsuit is the Phillips Petroleum Company's well. When did you and your husband conclude to drill an irrigation well on this section?
A. In the fall of 1952 we decided we wanted to drill an irrigation well on the south quarter.

Q. You have a family, do you not?

A. I have three sons.

Q. And your principal occupation is that of a housewife?

A. That is right.

Q. And in most of the negotiations in this matter did your husband act as your agent? A. My husband is my agent. I don't have time to attend to it. I have a home to run and three children to raise.

Q. Do you know Dale Lewis? A. Yes, sir, I do.

210 Q. The Area Superintendent for the Phillips Petroleum Company? A. Yes, he has been in our home.

Q. Did he come to your home and discuss the matter of gas supplying this well you were drilling on the Phillips Petroleum Company's leasehold? A. That is right.

Q. Do you know about when that was?

A. It was the latter part of December or the first of January and I believe it was in the later part of December, 1952.

Q. Did he visit there in your home with you and your husband for quite some time?

A. He did. I sat down for a while -- I had my household duties to perform and went back to my work, but I was there when he started to leave and at that time he said, "Go right ahead and complete your well. There is a valve that will have to be changed. We will change the valve and whenever you get ready, complete your well, in order to hook onto the gas, give us a ring and we will hook onto you."

Q. (By Mr. Sweet) That was shortly before your second
211 well was connected up. A. That is right.

Q. (By the Court) Was that before you drilled the well or after you had commenced it? A. We had started the well. Before we started the well -- there were Phillips workmen around there all the time. I don't see them but my husband does and we knew there were other people getting irrigation gas from Phillips so we had no reason to believe that we would be cut off from it, if they were getting the gas, and it is commonly understood out there that that is a natural gas of that country, and we live there and we have dry farmed there and why should not we use a natural resource?

Q. (By Mr. Sweet) Have you tendered or paid to the Phillips Petroleum Company the amount you considered you thought was due them for the gas you had used on the leasehold? A. That is right, we have. Also, in the West and I know Oklahoma is considered in the West, a verbal understanding

is as good as a written agreement. We don't have to go around signing things all the time.

Q. (By the Court) Well, he told you if you would go ahead and finish the well he would furnish you sufficient gas to operate? A. He said the gas would be there available for us.

Q. (By Mr. Sweet) Is that about all you know about this? A. The only other thing I know is that we signed a contract and gave them a $100.00 check for a meter and then Mr. Lewis came to our house and Bob was not present but I was there and gave me the $100.00 check back for the meter. He said, "I'm very sorry but this has been taken out of my hands and I can't go ahead and make this contract now."

Q. About when was that? A. I'm sure it must have been in May sometime. I think it was May 12th he wrote the $100.00 check for the meter and gave it to him.

Q. Was it about two months later when you got the letter from Mr. Ripple? A. Yes, sir, it was about July 24th. We received the letter saying they would cut us off.

Q. Did Mr. Lewis at that time say anything to you as to why he could not carry out his former understanding with you? A. He just said it had been taken out of his hands.

Q. That is all.

Cross Examination

Q. (By Mr. Williams) You say, Mrs. Buster, this conversation with Mr. Lewis took place at your home in December of 1952? A. Yes.

Q. Is that the time that you signed the contract?

[213] A. No, he didn't have a contract with him.

Q. He didn't have a contract with him at that time?

A. No. He said he would get a contract and for us to go ahead and complete the well and he would change the valve for us so we could hook onto the well.

Q. You were told, however, there would have to be a contract for the use of this gas? A. Yes. He said later on we would sign the contract.

Q. Did you discuss the terms of the contract at that time? A. No.

Q. There was no discussion as to the volume of gas to be used? A. No.

Q. No discussion as to the length of time over which you could use the gas? A. No, sir.

Q. No discussion as to the price to be paid for the gas? A. No.

Q. Did you and your husband obligate yourselves in any
214] way to take any amount of gas?

A. We did not.

Q. You didn't obligate yourselves to drill the irrigation well? A. We obligated ourselves to drill that irrigation well.

Q. I mean to the Phillips Petroleum Company. You made no commitment to Mr. Lewis as to the drilling of the well, obligating yourself to drill the well?

A. No.

Q. You made no obligation you would continue to operate it after you had drilled it? A. We would expect to. How would we get our money out of it?

Q. You made no obligation you would operate the well over any period of time? A. No, there was no discussion.

Q. You made no agreement with him you would not change to some other type of fuel? A. Why would we when we had natural gas?

Q. But you made no such agreement?

A. No.

Q. Are you sure this conversation you had with Mr. Lewis did not occur in your home in March or April after this well was drilled when Mr. Lewis came to your house to see about a contract for this well that had been connected?

A. No, it happened at the dates I told you.

215] Q. In December in your home? A. Yes, sir.

Q. And Mr. Lewis was there at that time?

A. Yes, sir.

Q. And you had this conversation you testified about?

A. He was in our home quite some time.

Q. You don't feel you could be mistaken about that?

A. I am positive of that.

Q. He was at your home later, in April or May, to discuss the matter of the contract? A. He brought the contract, yes, sir.

Q. He did discuss with you at that time about the contract? A. No, he just gave it to us and said to read it over.

Q. And you did read it over? A. Yes.

Q. And you did at that time sign it?

A. No, sir.

Q. You did at a later date sign the contract and return it to him? A. Yes, sir.

Q. (By the Court) Did you sign the contract that he prepared? A. That he prepared?

Q. Did he prepare the contract that you signed?

A. I don't know who prepared it.

216] Q. Who brought it to you? A. Mr. Lewis brought us the contract and he said for us to read it over and we did and we didn't like a clause which was in it so we took it to our attorney in Guymon, Mr. Rizley. In this clause it said they could cut you off after it has been used a year, and in thirty days they can give you notice and cut you off at the end of every year and we didn't like that, because when you go to the expense of drilling your irrigation wells, you can't be cut off and they wrote in, and they said they couldn't change it, so then finally the only thing we could do was to decide to sign the contract, so we signed it and gave them a $100.00 check for the meter, and then that is when he came back to the house and said he was very sorry.

Q. (By Mr. Williams) I hand you this instrument that has been marked Defendant's Exhibit A, with the exception of the little pen notation at the top which was added later in our office. Is that the copy of the contract that was signed by you and your husband? A. Yes, this is the contract.

Q. And the signatures appearing on the second page are

217] the signatures of yourself and your husband?

A. That is right.

Mr. Williams: We offer in evidence Defendant's Exhibit A, and call your Honor's attention to the top where there is a phrase in pen "not accepted in company". That is not part of the instrument. It was added in our office and we had no way of removing it but it is not part of the exhibit.

Q. (By Mr. Williams) This is the contract that contains the provision it is for a year and continuing thereafter with the privilege of either party to terminate on thirty days written notice? A. That is right.

Q. It also has a limitation of one percent of the allowable of the well, or do you remember that detail?

A. I don't remember that.

Q. (By the Court) This is the contract you signed. That is the contract that was brought to your house by Mr. Lewis? A. Yes.

Q. (By Mr. Williams) Mr. Lewis didn't represent to you that he had the authority to sign that contract, did he?

A. To the people in the Panhandle?

Q. I mean to you? A. To me then. He is representing the Phillips Petroleum Company and whatever he says is law.

Q. Now he didn't tell you whatever he said was law, 218] did he? A. No, but the people of the West believe that.

Q. He told you this contract would have to be sent in to Bartlesville for approval or signature there, didn't he?

A. I guess he did. I don't remember.

Q. He was there in the latter part of December, you say. As a matter of fact, your irrigation well had already been commenced prior to that, had it not?

A. Yes.

Q. And you were drilling your irrigation well before you ever talked to Mr. Dale Lewis?

A. Yes, sir.

Q. That is all.

——— Re Direct Examination

Q. (By Mr. Sweet) Before you signed that agreement, had you received any warning from Mr. Lewis about a possible change of policy in the Phillips Company?

A. Yes, he was with my husband and he said you better sign that contract. He said they are already cutting them off in Texas and you would have a year at least to run it then.

Q. Was it because of the warning?

A. It was because of that warning we finally signed the contract.

Q. As a partner in your husband's business; do you know 219] about how much you spent on the irrigation well?

A. Close to $17,000.

Q. That includes a big reservoir tank?

A. A big reservoir.

Q. Would you and your husband have expended that money in drilling that irrigation well had you not had the assurance from Mr. Lewis on behalf of the Phillips Petroleum Company you would have natural gas for fuel purposes?

A. We would not have drilled the well had we dreamed we could not use the natural resources of the Panhandle.

Recross Examination

Q. (By Mr. Williams) You did it on the assumption you could use the gas from the Panhandle but you didn't do it on the basis of any promise Mr. Lewis made to you, did you?

A. We had drilled one well and had connected to Skelly and they had been very nice about it. They were willing in all respects. We knew there were other irrigation wells in the Panhandle that were using natural resources. Why would we believe anything else but that we could use it?

Q. But you had already, in this particular instance, had one drilled and had commenced another irrigation well before you talked to Mr. Lewis? A. Yes.

Q. So your starting to drill the wells was not because of any assurances given you? A. No, we were drilling the well when he assured us.

220] Redirect Examination

Q. (By Mr. Sweet) Did you know of other people using natural gas, Phillips' gas? A. Alonzo Phillips had it and Henry Hitcher were using the Phillips' gas.

Q. Up to that time had you ever heard of any producer objecting to the royalty owners using natural gas to power an irrigation well? A. No, they were all in agreement.

Recross Examination

Q. (By Mr. Williams) You said you knew of others, Mr. Phillips, and I believe you named certain others. Were you acquainted with the terms and conditions under which those other persons were taking and using gas from the Phillips Petroleum Company for irrigation purposes?

A. No.

Q. You don't know what type of contract they had with the Phillips Petroleum Company? A. No, but they liked everything about it and were well satisfied.

Q. And you didn't have any curiosity to find out what those terms and conditions might be? A. Why no, why would we?

Q. You did not? A. No.

221] Q. You just assumed everything was satisfactory?

A. We assumed too much, it looks like, yes, sir.

(Witness excused)

222] ROBERT W. BUSTER, one of the plaintiffs, testified as follows:

Direct Examination

Q. (By Mr. Sweet) State your name. A. Robert W. Buster.

Q. You are the husband of Mayoe Buster who just left the witness stand? A. Yes, sir.

Q. Where do you live? A. A mile and a half east of Guymon on Highway 3.

Q. How long have you lived in that area?

A. I have lived in Guymon thirty-eight years. I was raised four miles east of Guymon and when we built, we built on this place. I think it was about '41. Thirty-eight years I have lived there.

Q. What is your occupation? A. Farming.

Q. Do you engage in both dry land and irrigation farming?

A. Yes, sir.

Q. How long have you been engaged in that occupation?

A. Oh, ever since I grew up. I started helping Dad and then we were in partnership together, and when he passed away in '49 I took over the business.

Q. Are you and your wife now farming more or less as a partnership? A. Well, we call it that, yes.

Q. How many irrigation wells do you operate?

223] A. Two wells.

Q. I believe your land is located in different sections about four miles apart? A. The first well I drilled was in the early part of '48. It was in the southeast of 33-3-15. It is on a Skelly gas well and we have been on that ever since. We took our gas from them and keep track of our hours and they bill us for it every six months.

Q. Do you and your wife, as tenants in common, own the northeast quarter of section 28-2-15?

A. Yes, sir.

Q. When did you decide you might want to drill an irrigation well on that quarter? A. In the fall of '52.

Q. At that time, Mr. Buster, were you acquainted with other farmers in that area who had irrigation wells and who were using natural gas for fuel purposes?

A. Yes, sir. Alonzo Phillips was using it. I knew he had a contract with them. I don't know the contents of the contract but he had been using it and he drilled his first well before I drilled my first one.

Q. What company was his contract with?

224] A. The Phillips Petroleum Company.

Q. How far did he live from you? A. His well was a mile

west of the well I put down on Phillips.

Q. Do you know of other farmers in that area that are using Phillips gas for fuel purposes?

A. I knew the Hitches were. I knew several in Texas re, Morris Freeman and Wes Freeman. There have been several others that have drilled wells down there before I drilled that one but I don't know they had a contract. I don't know they did. I am positive Morris did and Wes did.

Q. Up to that time had you ever heard of any gas producer in that area making objection to the use by the royalty owner of gas for irrigation purposes as long as they were willing to pay for it? A. No, sir. So far as I knew it was standard procedure. Otherwise, I would have investigated it more closely. I did not dream they were going to change policy.

Q. After you concluded you wanted to drill a well down here on the south farm, on the Phillips' leasehold, what preliminary investigation did you make, if any, about the use of natural gas for fuel purposes?

A. You mean after I decided to drill the well?

Q. Yes. A. Well, I didn't really make any. I never thought much about it. I just thought it was standard procedure, and we would get the gas. We had always had it. I talked to these other farmers and they got it. I never thought anything about it but what they would hook me up.

225] Just before I completed the well I went down to see Dale. In fact, I had talked to one of the boys in the field. They said he was ahead of them. They called Dale and Dale was out that day and he came in from his car and told me he would come by the house and see me, as I remember it, or called me one, but anyway he came by the next day or two and we talked about it and he told me to go ahead and hook onto the well, rather he told me he would put a new valve on the well, that this other one had been there a long time and was corrugated and they would put a new valve on there so it would work freely, and if I wanted him to, to give him a ring and he would help me hook on when I hooked my gas line on.

Q. When was that conversation?

A. It was either the latter part of November or the first of January.

Q. You had started to drill your well at that time?

A. Yes, sir, I had practically completed the well but we had not set the pump yet.

Q. When was your well connected onto the gas?

A. It was about the 12th; somewhere along in there of January.

Q. About the middle of January, 1953?

226| A. Somewhere right around that time.

Q. What did the Phillips Petroleum Company do with reference to making connection with the gas well?

A. All they did was put their valve on. I didn't take time to call Dale. I just went ahead and hooked on.

Q. They put a valve on there? A. Yes, sir. The valve was already on. They had changed that.

Q. How long was it after that up until you saw Mr. Lewis again? A. Well, I can't remember exactly the date, how long it was. At the time he was by the house the first time he told me to go ahead and hook on. They didn't have any meter at that time and he would have to order out some meters to put on and as soon as they got those in he would put the meter on the well and he would bring a contract by for us to sign. It was later on, I don't remember the exact date, he brought these contracts by and left them for us to look at.

Q. That is when you took the contract to Mr. Rizley?

A. That is right. I questioned those two clauses in the contract. One, about the termination of the lease in a year and the other about the one present.

227| Q. After you discussed it with Mr. Rizley, did you later have a warning from Mr. Lewis? A. Yes. That was along in May.

Q. What was the substance of that, what did he say to you? A. I don't remember the exact words but it was to the extent they were cutting off the users of gas in Texas and he thought they would possibly start cutting us off in Oklahoma but it was possible I could still get this contract through if I would sign it and send it in and they would give me a year, so I went ahead and sent it in.

Q. Was it that warning from Mr. Lewis that reluctantly caused you to sign the contract that has been introduced in evidence? A. Yes, sir.

Q. After you got the assurance from Mr. Lewis the contract would be available, did you spend any money in equipping your well on the assurance of your right to use natural gas?

A. Well, yes. We bough quite a lot of equipment after that.

Q. About what cost of an irrigation well is involved in digging the hole? A. Well, as I remember, I paid $8.50 a

foot but we lost three holes. I mean two holes and got a third one. My well cost a little more than these
228| others on that account because I was afraid to fill in with dirt in the water table down below, in the water sand, so I used gravel. The same kind of gravel we used to pack the well. I went ahead and filled those wells above the water table with gravel.

Q. About how much did you spend in making the hole itself? A. The drilling was $8.50 a foot. Then the casing was $4.50 or $5.50.

Q. Give us an over-all estimate. A. I would say about $13.50 a foot.

Q. How many feet? A. That is 390 feet deep.

Q. That would be a total of about $6,000?

A. A little over that.

Q. And the pipe. What is the rest of the cost involved?

A. Your pump and engine.

Q. Motor? A. Motor and engine. Your pump will cost you, depending on the setting. On that setting there it was right close to $6,000, then the engine was $2800.00. Then I built a reservoir and, of course, the running of the water up into the reservoir and also the drainage ~~off~~ of the reservoir.

Q. All this money you expended in equipping the well, was that expended after you had this conversation with Mr. Lewis and he told you the gas would be there for you?

A. As far as the well, I had already paid for the
229| casing. I had paid some on the well. I don't recall the exact figure, and I paid for the pump. I paid for the reservoir and all of that after I had this talk with him, yes.

Q. About how much would you say you spent after you had this conversation with Mr. Lewis? A. Oh, at least $10,000 on the well and pump and engine.

Q. Well, pump and equipment. Now at that time I will ask you whether it was the general practice and policy and conduct of the Phillips Petroleum Company in that county to allow royalty owners to use natural gas for irrigation purposes? A. I never heard of anybody being cut off.

Mr. Williams: Of course, I realize the rules of evidence but it does seem to me the matter of general policy and custom has no bearing on this lawsuit. This is predicated on assurances by us, according to their theory, that our Superintendent said they could have the gas, so it makes no difference

what we might do with the others. That gives to these plaintiffs no legal right to insist they have it. He has not shown himself to be qualified to testify as to the general custom.

The Court: The question is whether or not it was the custom in that county for the royalty owners to use Phillips' gas to operate their irrigation projects.
230] Objection overruled, exception allowed. There is no jury here; you may answer the question.

A. (The witness) No, I have never heard of anybody up until the time that Ripple sent that letter out in July. That is, in the State of Oklahoma being cut off or any policy change with the exception --- I will take it back -- there was a warning Mr. Lewis gave me when he brought the contract down. That was that warning that they wouldn't give us a contract but he didn't warn me they were absolutely going to cut us off there. He said they had been cutting wells off in Texas.

Q. Did he tell you why he couldn't give you a contract?

A. No, sir. He just told me his authority had been taken away from him to do that.

Q. That his authority had been taken away?

A. To issue the contract to us.

Q. Do you know of any other company in that area, any other natural gas producer, that objects to the use of natural gas to royalty owners for irrigation purposes?

A. I know of one or two instances where Skelly has had to cut off some wells in Texas they had just lately because they were selling the gas to Phillips.

Q. I am talking about the Texas County area.
231] A. No, I don't know of any.

Cross Examination

Q. (By Mr. Williams) I believe you testified that the irrigation well involved was about to be completed at the time you talked to Mr. Dale Lewis? A. The well was close to completion.

Q. You drilled that well upon the assumption you would get gas and not upon assurance by Mr. Lewis to you that you would get it? A. I drilled it on the former policy of Phillips and what they had been doing in the past.

Q. And the statements you made to Mr. Lewis you have testified about, were made at the time the well was about to be completed? A. Yes, sir.

Q. You speak about the practice and policy of the Phillips Petroleum Company in Texas County to permit its lessors to use gas for irrigation purposes. Will you detail to this Court the instances to which you refer?

A. Well, they sold gas to Mr. Phillips.

Q. And Mr. H. C. Hitch, Jr., on the Hitch old contract?

A. I don't know how many contract Mr. Hitch had but I knew he was taking the gas and had the wells.

Q. That is, there were two such instances?

232 A. In Texas County, that I knew of in Texas County.

Q. How many in Texas? A. Morris Freeman had several wells.

Q. How many did you know about? A. I knew he had at least three wells in Texas and Wes had one.

Q. In the Texas Panhandle did you know of more than eight contracts the Phillips Petroleum Company had for furnishing gas for irrigation purposes?

A. No, sir.

Q. Everyone you know about was furnished under a written contract, were they not? A. That is what I knew. I knew there were contracts. I had never seen a contract.

Q. You knew it was on a temporary basis for one year.

A. I didn't know that until he brought the contract up and I read it and that was after I talked to him the first time.

Q. In December when you had this conversation with Mr. Lewis it was at your home, was it not?

A. Yes, sir.

Q. You didn't discuss any of those details with him?

A. We didn't discuss the terms of the lease at all.

Q. You didn't discuss the matter of time and you didn't discuss the matter of volume?

A. As far as the volume was concerned, the way I 233 understood it was, we could have the gas, nobody said we couldn't have it.

Q. In whatever form you wanted to take it?

A. We could have enough to run our engines on. That is the way I understood it.

Q. If you wanted to take gas for one month you could, but if you didn't want to take it the next month you didn't have to? A. That is right.

Q. You didn't obligate yourself to take any amount of gas, did you? A. No.

Q. It was all within your own discretion as to the volume of gas you would use? A. Well, it naturally would be on an irrigation project.

Q. You didn't discuss price? A. No, I assumed the price would be the head price.

Q. My question was, you didn't discuss price.

A. I think he told me at that time it would be the head price.

Q. What price? A. Field price.

Q. You are not right certain about that, are you?

A. Pretty certain.

234] Q. You are certain now since I have interrogated you closely about it. As a matter of fact, this conversation you had with Mr. Lewis occurred, did it not, in April following the drilling of this well when he came to your house and talked to you about the matter of a contract.

A. That was not the first one, no.

Q. Your prior conversation about the matter was at the time when you went to the company at the Hansford Plant and Mr. Lewis was not there.

A. Then he come to my house.

Q. You are sure that was in December? A. I wouldn't swear to it. I said December or the first of January.

Q. Wasn't the first time you ever met Mr. Lewis personally in April when he came to your house to talk to you about this contract? A. No, sir.

Q. You say the company did install the nipple or stub?

A. They installed the valve.

Q. To the connection on the irrigation fuel line?

A. He told me he would send the man down and make the connection for me and I am very sorry now I didn't have him do it.

Q. From that time on you didn't go to the Phillips

235] Petroleum Company or Mr. Lewis to discuss the matter of a contract. You merely waited for them to come to you. Is that right?

A. That is what he told me, that he would bring a contract back, would call me or see me in town or something.

Q. Did Mr. Lewis ever represent to you that he had the authority to make this contract or didn't he tell you this contract would have to go into Bartlesville for execution or approval at Bartlesville? A. He told me when he brought

the contract out. He didn't tell me that the first time.

Q. And the contract you introduced in evidence as Defendant's Exhibit A is the contract you and your wife signed? A. That is right.

Q. It contains a provision that provides for the use of the gas for the one year with the right of either party to terminate on thirty days notice? A. That is right and I had Dale write in on those items.

Q. I believe you and your wife have testified you had tendered to the company your gas payment up to August 1, 1954, and that was not accepted by the company as evidencing any right in you, but it was a conditional circumstance.

A. As far as I understood it, it was a payment on account.

236] Q. No agreement as to the amount, no binding agreement as to the amount but merely a payment on account of what may be determined to be due? A. That is the way I understood it.

Q. The amount of the payment was $375.40?

A. That is right.

Q. From the time the well was completed until August I of this year? A. That is right.

Q. The amount hasn't been agreed to by Phillips Petroleum Company but was the amount you tendered?

Redirect Examination

Q. (By Mr. Sweet) What was that amount of $375.40? Upon what was that based? A. It was based on the hours we had run the engine at 500 cubic feet per hour, the same as Bill figured his, and the price was figured at 9.83 cents.

Q. Per thousand cubic feet? A. That is right.

Q. That is the price for which the Phillips Petroleum Company paid you for the royalty? A. The way I understood it, .9.826 and figured it 9.83.

Q. At the time Mr. Lewis brought you the written contract, I believe you said it was in May, was it?

A. Well, it was after the first meeting, the first

237] time he was out there and later on after he brought it.

Q. Was it after your well had been connected up?

A. Yes, sir.

Q. And you were using the gas? A. Yes, sir.

Q. And he brought you this written contract?

A. Yes, sir.

Q. What did he say then about whether or not it had to

go back to Bartlesville? A. I think he said something about that when he brought the contract, that we would have to sign it and then he had to send it in.

Q. Did you know then as to who had to sign it on behalf of the Phillips Petroleum Company? A. No, sir.

Q. After you hooked up the gas there about January 15, 1953, did the Phillips Petroleum Company's employees come by there regularly? A. Yes, sir, they came by regularly and they were servicing the wells. Our farm has several quarters. We have Phillips' wells on them and they service those wells. I don't know that they serviced them every day but they serviced them every once in a while.

Q. Do they check the reservoirs standing out there?

A. We check it for them.

238] Q. Would you say the Phillips Petroleum Company's employees knew you were using the gas?

A. I know the employees did. I wouldn't say Dale did. I never saw him but men under him did it.

Q. How often are those wells checked?

A. I don't know exactly but they service them every so often. Sometimes I think they are out there every day.

Q. That is Phillips Petroleum Company employees?

A. Yes, sir.

Q. After you received the letter from A. M. Ripple, the head of the Natural Gas Department of the Phillips Petroleum Company about July 25, 1953, advising you unless you cut off the gas by September 1, the Phillips Petroleum Company would do it for you, did you ever talk to Mr. Lewis after that about the situation? A. I don't think I did until after this case had been filed.

Q. Up until the time you received that letter, other than the hint you had from Mr. Lewis, had you had any word from the company that they were considering the severing of your gas supply? A. No, sir.

Q. Would you have expended the money you did in buying
239 equipment, digging the reservoir and putting in a motor and pump and all the other equipment you put on that gas well, would you have expended that money had you known you were not going to have natural gas?

A. No, sir, I would not.

Q. Are you familiar with other fuels out there in that area? A. Yes, sir.

Q. Referring you to Plaintiff's Exhibit A, I will ask you to state to the Court whether or not there are any of

these other alternate or substitute supplies immediately available there to you now except the Butane or Propane?

A. Well, we could get the Diesel but that would cost us an enormous amount to change engines.

Q. What do they estimate that?

A. They estimate it at $5,000.

Q. What about the Southwestern Public Service Company's gas? A. No, I think they are extended. I think they use most all of it themselves.

Q. Their gas is taxed to supply the community. What about the West Texas Gas Company? A. I don't know where it is.

Q. They don't even have a line in Texas County, do they?

240] A. Gasoline would be enormous. Butane would be over ten times at least. As far as the Diesel you would have to change your engines, then it would be considerably more, and electricity, the cheapest rate you can get, as far as I know, is a cent and a half. There are REA lines out there but they are just two phase lines. They would have to run three phase lines; and I don't know whether they would do that.

Q. They have no immediate facilities to serve you electricity? A. Not that I know of.

Recross Examination

Q. (By Mr. Williams) Have you talked to these other sources of suppliers of fuel to determine whether they could supply you? A. You mean on electricity?

Q. Electricity or on any of the others.

A. No, I haven't talked to them. I got a circular from the REA about irrigation and it showed some figures in there and so on, and how much electricity was, and they showed their electricity was for production purposes, one and one-half cents.

Q. Would they have it available for that purpose?

A. They don't have three phase lines, and you would have to have that.

Q. Are there other fuels available?

A. The cost would be prohibitive on most of them.

241] Q. Mr. Phillips is using propane or butane, isn't he?

A. And it is killing him, too.

Q. But he is doing it, isn't he?

A. I don't think he has been irrigating steadily this

summer. It is too expensive.

Q. But you understand when he is irrigating, he is irrigating with propane and butane. He has to. He can't get gas.

Q. (By the Court) Could you do it economically?

A. No, we couldn't, and I can't understand why we can't have gas when it is out there under our land.

Q. Is gas the only fuel you could use economically?

A. It is, yes, sir. Now in the area of Texas, in the Panhandle, there are wells, they don't pump near that deep. They use Butane considerably too, but they use a little different type irrigation, and they don't pump water from near the depth we do, and when you go on down deeper it costs so much more to pump with Butane you just can't hardly afford it.

Q. What I have in mind is, could you profitably use any other fuel than gas? A. You mean could we make a profit at all?

Q. Yes, sir. A. Very little.

242] Q. (By Mr. Williams) As a matter of fact, you can make a substantial profit using these other types of fuel, can't you? A. Not that I know of.

Q. The only thing, you can't make the profit that you can out of gas.

A. I don't think you could very much using butane.

Q. But there are other farmers out there using other fuels to irrigate with, aren't there?

A. There are some in Texas. There isn't any up there except Alonzo and he told me it was killing him off.

Q. (By the Court) He said what?

A. Well, using the expression I said "killing him off". It is hurting him. It is costing him too much. He don't know whether he is going to realize any profit from it or not.

(Witness excused)

Mr. Williams: Is that all in this case?

Mr. Sweet: Yes, sir.

Mr. Williams: I would like to renew my motion to dismiss for the reason the evidence does not establish a claim

entitling the plaintiffs to recover.

243] The Court: Overruled. Exception allowed.

Mr. Sweet: The remainder of our evidence will be directed to Causes Nos. 6016 and 6017, in which the evidence will be more or less common to the two cases.

HENRY C. HITCH, Sr., called as a witness on behalf of the plaintiffs, testified as follows:

Direct Examination

Q. (By Mr. Sweet) What is your name?
A. Henry C. Hitch, Sr.
Q. Where do you live? A. Twelve miles southeast of Guymon.
Q. How long have you lived in Texas County?
A. Seventy years.
Q. What is your occupation?
A. Wheat raising and cattle raising.
Q. Have you been a rancher and farmer all of your life?
A. I have.
Q. And were you born in that country?
A. No. I was born in Missouri but came there with my father when we were living up on the dry Cimarron north of Liberal.
Q. You have lived there since all of your life?
A. Yes, he came down there when I was a baby.
244] Q. You have what is known as the Henry C. Hitch ranch?
A. Yes, sir.
Q. Operated by you and other members of your family?
A. Yes.
Q. About how many acres are there in that ranch?
A. Oh, in the neighborhood of twenty thousand acres.
Q. About how many Phillips Petroleum Company's gas wells are there on your ranch? A. Well, there are thirty or forty of them.
Q. How many Phillips on sections in which you own all the minerals? A. Yes, sir, at least thirty where we own all the minerals. Then probably twelve or fifteen where we own a portion of the minerals.
Q. Is your land located principally on Cold Water Creek?

A. Yes.

Q. That is your ranch line? A. Cold Water and Frisco Creeks.

Q. Have you done some irrigation farming?

A. Yes, we have.

Q. When did you start your irrigation activities?

A. I think about '47 maybe. I don't remember the exact year.

Q. How many irrigation wells do you have now?

A. I believe there are eleven.

245] Q. In conjunction with your family operation?

A. Yes.

Q. Do you and your wife own all of section 6-1-16?

A. We do.

Q. Do you have some irrigation wells on that section?

A. We do.

Q. I believe you have two. A. Two small wells, yes.

Q. Two small irrigation wells? A. Yes.

Q. Do you know the name of the gas well on that?

A. It is the Place, I believe.

Q. The Place gas well? A. Yes.

Q. Have you been securing gas to power those two irrigation wells from the gas well located on that section?

A. We have.

Q. For about how long? A. I guess one of those probably, I don't know the exact time; maybe three years and the other one probably half that long.

Q. About two years? A. Yes, or a little less. I don't remember the exact dates.

Q. When did you drill your first irrigation well on land covered by a Phillips lease, about when?

A. Oh, four or five years ago.

246] Q. Did you get gas to use on that well?

A. Yes.

Q. I believe it was your son.

A. Yes, he had a contract on that well.

Q. Your son is Henry C. Hitch, Jr.?

A. Yes.

Q. That well is not involved in these cases?

A. No, they are not.

Q. I believe that contract was dated in 1950?

A. I don't remember the exact date of it.

Q. Did you use gas for irrigation purposes on that tract for quite some time before you got the contract?

A. I told you I don't know when they got that contract. You see my son and Skelly kind of looked after that and really I never saw the contract.

Q. You say that you own this land. Is it all covered by Phillips' leases? Does Phillips have a lease on your whole ranch? A. Practically all of it. Skelly has maybe the north row of sections. I might add further that we would be entitled to gas on about forty of those sections for domestic purposes, wherein there are no houses that are taking any gas and we would be entitled to the gas under our lease.

Q. Under your lease you would have a right to use that
247] gas for domestic purposes? A. Yes, sir.

Q. How many sections are you taking gas from for domestic purposes? A. Four, I believe. Wait a minute -- I believe there are only four of them.

Q. You have eleven irrigation wells now?

A. Yes, sir.

Q. How many of them are served with Phillips' gas?

A. Five.

Q. Who serves the other six?

A. Skelly.

Q. Have you had any trouble with Skelly?

A. None at all. They bill us for the gas and we pay them for it.

Q. When you drilled these wells that are on the Phillips' leases, I will ask you if it was general knowledge in that area, in the Texas County area, that it was a common custom, practice and policy of the Phillips Petroleum Company to let all their royalty owners have gas for irrigation purposes?

A. It sure was. If it had not been we would not have
248] drilled these wells, and furthermore, Phillips' employees, they are fine people, we get along, but they have a road on every section of our land and they know what is going on there every day, and I say they are all fine people. We get along fine with them.

Q. Your homestead is about how far from the Phillips' Hansford Plant? A. I imagine it is about ten miles.

Q. Do you see the employees quite often?

A. The road runs right through by us and when they service those wells, we see them. I don't know whether they service them every day but it seems like they do. We are friendly. They stop and visit us. We told them to make a crossing wherever they wanted to and to make roads wherever they wanted to.

Q. On your large acreage there when you have any field problems, who was the Phillips Petroleum Company's representative in your area? Whom did you see?

A. I believe Dale Lewis is the one, like when something gets stopped up or breaks down, they told us to call over there and they would fix it and we do.

Q. Who is George Allison? A. He is up there all the time. He is a fine fellow.

Q. He was Area Superintendent? A. Yes, sir.

Q. Did he connect up your gas for domestic purposes?

249] A. I don't know who connected it up. They come up there, some of their men and did it.

Q. (By the Court) Who did the connecting?

A. Some of the Phillips men.

Q. Did you talk to Mr. Allison or Mr. Lewis about gas?

A. I don't think I ever have. My son and son-in-law did most of it when they drilled the first well, they went to see them before they drilled the well and everything was arranged, and we supposed the other well would be the same way.

Q. (By Mr. Sweet) Would you state you did tie on and did get gas from that Phillips' lease, at least with the consent of the employees of the Phillips Petroleum Company?

A. Yes, sir, they knew it. They are always there every day.

Q. When did you first have any information there might be some change of policy on the part of Phillips Petroleum Company? A. I think shortly before we got that letter, there was something; understood someway they were going to cut us off, and it wasn't very long until we got that letter. I don't just remember the dates.

Q. These two wells that are supplied by the Place well,

250] the land being owned by you and your wife, they were drilled and connected up after your son got a contract.

A. Yes, I'm sure they were. They were connected up after that.

Q. When you drilled those wells you knew the Phillips Petroleum Company was already supplying the gas for irrigation purposes? A. Yes, sir. Had they not done that we would not have drilled those wells.

Q. (By the Court) Those wells were connected up by Phillips or some of its representatives? A. No, I don't think they were. They did the first one but some of them we connected ourselves.

Q. Which ones did you connect?

A. I believe the two wells on this place, I believe we connected them ourselves.

Q. Did you discuss it with the Phillips people?

A. I don't believe we said anything to them about it, as I remember. Like I say, I didn't do very much of that myself.

Q. How old are you? A. I am seventy years old.

Q. Are you turning over quite a few of your activities?

251] A. Yes, I'm not as active as I was fifty years ago.

Q. To your son and son-in-law?

A. Yes, sir.

Q. Can you operate those irrigation wells profitably with any other fuel other than natural gas that comes from under your own soil? A. I don't think we can. Some people say maybe they could but I would not want to try it.

Q. About what does it cost, say these two irrigation wells on the Place lease, about what did it cost to drill and equip those wells? A. I think it cost about $15,000 a well and we spent about $15,000 leveling the land and we spent a $100 an acre leveling 150 acres of land.

Q. For irrigation purposes? A. Yes, for irrigation purposes.

Q. You spent all that money in reliance upon what was generally recognized in the community as the custom and practice of the Phillips Petroleum Company to let their lessors have the gas? A. We sure did, yes.

Cross-Examination

Q. (By Mr. Williams) Mr. Hitch, the two wells, irrigation wells located on what has been referred to as the Place lease? A. Yes, sir.

Q. I believe you testified one of those wells was

252] drilled aporoximately three years ago and the other one approximately two years ago?

A. Something like that. I don't just remember the exact dates right well.

Q. The well involved in Case 6016 is on what is known as the Knott lease, is that correct?

A. That is correct.

Q. And that well was completed in May of 1953?

A. I believe that is right. I don't remember just when those wells were completed.

Q. All three of those wells are connected to the domestic fuel line leading to the dwelling place on those tracts?

A. Yes, sir, they are, and I will tell you why that was done if you want me to.

Q. That is where they are connected?

A. That is where they are connected.

Q. That connection was made by yourself?

A. Yes, or some of the help.

Q. (By the Court) Why was it done?

A. Well, the gas line ran to the house and these wells are on the other side and we did not want to put in a new line and we just connected onto the house and it made 3,000 feet of pipe to lay and we can pay Phillips just the same.

Q. Did the Phillips people know you were doing that?

A. Like I say, their men are by their every day. They know more about what is going on on my ranch than we do.

Q. (By Mr. Williams) The men going by there are line walkers and field hands of the Phillips Petroleum Company?

A. Yes.

Q. Looking out after leaks and testing the wells and doing those sort of things? A. Yes.

Q. You don't know of any Superintendent of the Phillips Petroleum Company who has gone by there and seen these connections, do you? A. I will tell you, because the Phillips' trucks are by there every day. I don't know who is in those trucks at all times.

Q. You are merely assuming? A. That is correct.

Q. You never discussed it with the Phillips Petroleum Company? A. I never did.

Q. When the connection was made to those fuel gas lines, there was no discussion with Phillips Petroleum Company about it? A. As far as I know, there was not.

254] Q. From the time those connections were made until only very recently there was never an attempt on your part or any of your associates' part to discuss with Phillips the matter of setting a meter or paying for the gas in any way, was there? A. No, as far as I know. As I say, there is an hour meter on those. We don't pay Skelly until they bill us. I told Tom Craig, "Anytime you want to bill us, do so." He is their head man in Amarillo.

Q. That was after these lawsuits were filed?

A. I don't know whether it was after or just before.

Q. You furnish Skelly a statement of the hours on which they base their billing, do you not? A. I believe they do.

Like I say, my son-in-law does that and he is not here.

Q. Did you ever furnish the Phillips Petroleum Company a statement of the hours? A. They wrote my son-in-law and asked for the hours about a year ago.

Q. That was after these lawsuits were filed, wasn't it?

A. I supposed he had paid for it and you said you had not been paid. I went home and found you had not so we told them to bill us, we would send a check, which I suppose he did. There was never anytime we were not willing to pay for that gas.

Q. You said there was another tract upon which you and
255] your son have a contract for the use of gas?

A. Yes, sir.

Q. That is on the Hitch-O lease? A. I believe that is the name of it.

Q. You know, do you not, that was pursuant to a written contract with the Phillips Petroleum Company signed by the Vice-President of the company? A. I understand we had a written contract but I never saw the contract.

Q. You knew, didn't you, that was for a term of one year with the privilege of either party to terminate it in one year? A. They told me it was. I supposed Phillips wanted to do the right thing. We didn't have any idea they would come in and say they wanted to cut us off.

Q. The right thing from your standpoint?

A. Well, honorable men.

Q. You said it was the general custom and practice in this area to furnish gas for irrigation purposes?

A. Well, it had been so far with us.

Q. Name the instances that make up that custom and general practice? A. Well, Morris Freeman over there has been using it for ten years before we did.

256] Q. Under contract? A. I don't know whether he had a contract or not.

Q. Name certain others. A. Phillipi or the Phillips well ahead of us. The Phillipi well and the Hitch-O well were the only two in Oklahoma. As far as I know they were. There were not many wells up there.

Q. And Wayne Freeman in Texas?

A. I don't know. I'm trying to make a living. I don't run around to find out who has water wells and one thing and another.

Q. But you have testified to a general custom and practice. A. As far as I knew and I will testify that again.

Q. And the three or four wells you referred to comprise that custom and practice? A. Yes, in the immediate neighborhood; that is what it was.

Q. The one in which you were involved was under a written contract for a term of one year.

A. Yes, the Hitch-O. Just like I say, we didn't think anything of it but that the well would be supplied with gas. We get along with Phillips. We have never refused Phillips anything.

Q. No official of the Phillips Petroleum Company ever
257] told you that? A. They didn't tell me, no and we get along with them. This is the first time we have ever had any disagreement with Phillips and the field men will tell you the same thing.

Redirect Examination

Q. (By Mr. Sweet) To your knowledge had there ever been any irrigation well drilled on a Phillips Petroleum Company lease wherein the company had denied the lessor the right to use gas for irrigation purposes? A. As far as I know there has not been until this came up.

(Witness excused)

H. C. HITCH, Jr., called as a witness on behalf of the plaintiff, testified as follows:

Direct Examination

Q. (By Mr. Sweet) Your name is H. C. Hitch, Jr.?

A. Yes, sir.

Q. You are the son of H. C. Hitch who just left the witness stand? A. Yes.

Q. Do you live near Guymon, Oklahoma?

A. I live on the home ranch twelve miles southeast of Guymon.

Q. Have you lived there all your life?
258] A. All my life.

Q. Your occupation is ranching and farming?

A. That is right.

Q. I will ask you whether you and your brother-in-law and your father operate as a partnership? A. We operate the

Henry C. Hitch ranch as a partnership and he and I are most active in the day to day operations. My father participates in the policy.

Q. You and your brother-in-law take an active part in the management of the farm? A. That is correct.

Q. You heard your father's testimony that you have about ten or eleven irrigation wells?

A. That is right.

Q. About six of which are on Skelly acreage?

A. And five on Phillips.

Q. And so far all of those wells have been using gas for irrigation purposes? A. That is right.

Q. When did you or your firm or your family drill the first well on the Phillips' acreage? A. The first well on the Phillips acreage was the Hitch-O and I believe that was completed in 1950.

259] Q. At that time who was the Area Superintendent of the Phillips Petroleum Company there? A. As I recall, George Allision was in charge of that phase. I think he was in charge of the plant and the field at that time. At any rate, as I recall, he was the man we dealt with.

Q. Prior to the time you drilled your first well on Phillips' acreage did you talk to Mr. Allison?

A. We did.

Q. About the use of natural gas for irrigation purposes?

A. That is right.

Q. What did he say? A. He said it would be made available to us and he told us to go ahead and drill our wells, which we did, and completed it and used it for several months, and at the end of that time a meter was installed, and a contract was brought to us which we signed, and then we estimated the amount of gas used up to that time.

Q. On that well there is a contract and a meter?

A. That is right.

Q. But is not involved in this litigation, that well is not? A. No, that well is not involved in this litigation.

Q. Do you remember what time your contract was dated?

260] A. I believe it was 1950. A copy of that contract is part of the evidence. We have it here.

Q. You have been paying on that well monthly according to the meter readings? A. We receive a monthly statement and pay on that I believe. It is fairly often we receive a statement.

Q. As I take it, on that well it is possible to determine

just about how much gas an irrigation well uses.

A. We match the hours up against the number of cubic feet we pay for and we arrived at 500 cubic feet per hour.

Q. Was that the record made by the meter on that well?

A. Yes. That is the largest well we have, largest engine; much larger than these other wells, and the engine pumps well water and is a bigger engine.

Q. After you drilled that well and connected it up, and got your meter, did you later drill a well on what is known as the Knott lease? A. That was drilled in the spring of 1953.

Q. That was the case in which you and your wife and brother-in-law and sister are parties plaintiff, No. 6016?

A. Yes, sir.

Q. After drilling that well, about when did you drill the well on section 20-2-15? A. It was in the spring of '53, and I think it went on the line along about in May. We had lots of trouble with it. The period of completion was right along due to the trouble.

Q. Up to that time, from your residence in that community
261] all of your life and knowledge of the gas business generally in that area, will you state whether it was the general practice, policy and custom, not only of the Phillips Petroleum Company but of all of the other gas producers in Texas County to permit its lessors to use gas for irrigation purposes? A. I know we started with Skelly and they were very cooperative in allowing us the use of the gas and tied us on. We paid for the gas at six months intervals on the basis of the logged hours of the engine. I do know other people have tied onto Cities Service and other people have tied onto wells up in the Republic area. I don't know that they were Republic wells up to that time.

Q. Have you ever heard of anyone running irrigation wells on land covered by producing leases that was denied gas?

A. No, sir, I never have up to this time, other than Phillips.

Q. Was it on the assumption of the general practice, policy and conduct of all these gas producers, including the Phillips Petroleum Company, that you drilled the well involved in this case located on section 20-2-15?

A. Well, coupled with my experience with the other
262] operators in the area and other peoples' experience with them, led me to believe there would be no question but what we could secure this natural gas for fuel.

Q. Would you have drilled the gas well had you know you

would be denied the use of natural gas --

The Court: You mean irrigation wells.

Q. (By Mr. Sweet) Irrigation well. Would you have drilled the irrigation well? A. I certainly would have not.

Q. How much did you spend drilling it?

A. That well cost in the neighborhood of $14,000 or $15,000.

Q. Was there any extra expense in leveling up the land?

A. There was considerable extra expense in ditching and leveling. We didn't find water on that part of the land and we had to build an above-ground ditch, and there was considerable expense involved with the leveling.

Q. How much would you say was your total investment in the irrigation well, including the ditching and leveling?

A. I think you could charge about ten dollars an acre for leveling. Then we would have to have at least $10,000 or $12,000 more machinery. You need a different type than your dry land machinery in order to irrigate with.

Q. Would you say you have an investment of $25,000?

263] A. I believe we could safely say there would be $25,000 invested there.

Q. The well was completed you say about May 1, 1953?

A. Yes.

Q. At that time were there rumors around that Phillips was going to cut off these gas users? A. No, there were none.

Q. Did you tie on the gas well about May 1, 1953?

A. We tied onto the line running from the gas well to the house because that was the closest point and saved the most pipe.

Q. Did you put an hour meter on that well?

A. The wells have a log kept there. We have one man to take care of each well. On this particular well, we have since rented that land but at that time we were farming it ourselves and leveled it. We keep this log and have a record of the operating hours of each well.

Q. Do you have one man who does nothing else except look after the wells? A. Yes.

Q. Do the records in your office reflect the amount run by each well each day? A. That is right, each well each day, the amount of money spent on each well and all pertaining to the one well.

Q. When did you first learn or receive any information

that the Phillips Petroleum Company was going to deny you the use of the gas from under your land for irrigation purposes? A. Well, the first intimation came from Robert Buster, and other parties and information given to him by Dale Lewis, but the first-hand knowledge we had was on receiving the letter from A.M. Ripple.

Q. That was July 22, 1953?

A. Yes.

Q. That was the letter in which he told you if you didn't get off by September 1 that the company would cut you off? A. That is right. That is the letter notifying us they were going to cut us off.

Q. Would you have expended this money, this $25,000 in drilling this irrigation well and leveling your land and ditching it and buying the equipment without the assurance or the knowledge of the practice and policy of Phillips Petroleum Company to let its lessors have gas? A. I certainly would not. I do not know what these other fuels cost exactly. All I know is what they told me they cost, and they told me many wells cost around a $1.00 an hour to operate; around $24.00 a day, and that is certainly all the profit we can expect to make out of any irrigation well in the course of a year's time.

Q. Have you had a varied experience in farming?

A. I grew up in farming, went to Oklahoma A & M College and took an agricultural course, and then obtained in it since 1937.

Q. Is it your opinion a man can successfully irrigate and pump water from the depth you have to pump with any other fuel.

A. Professor Harper, our soil professor when I was in Oklahoma A & M; he told me you couldn't profitably lift water over fifteen feet, and we are lifting it three hundred. I assume he knew what he was talking about and the only way we can lift it that high is through the use of natural gas for fuel; the only way we can profitably lift it that high.

Q. Is it your opinion you could not use profitably any of these substitute fuels and make any revenue out of your irrigation activity? A. I don't think we can. Some people are doing it but they haven't been doing it long enough to determine whether it is going to be profitable or not.

266] Q. How far is the Henry C. Hitch ranch headquarters from the Phillips plant at which Mr. Lewis and the other Phillips' employees are located? A. It just across the valley

and we can see it, and I would judge it to be about seven or eight miles over there.

Q. How often are the Phillips Company's employees by the ranch place and on your ranch? A. They are on it every day. They are by the headquarters I believe every day. They drive Phillips 66 trucks with the insignia on them. They also drive in those cars which are rather easy to distinguish because they have a radio antenna on them; radio and telephone antenna on them, and we visit with them and they stop and visit with us, and during the period in question, check the charts of these wells and he stopped every day at noon and visited for about fifteen minutes.

Q. Will you state positively that the Phillips' employees, the men at the plant, knew of this connection you had on the Phillips' gas well? A. If they had eyes they knew it because they passed by it every day. We know many of them personally. Some of them have formerly worked for us. There is no other way but that they knew we were using that natural gas for fuel.

Q. Do you know whether they say you when you were
267] digging the line? A. It took several days and I have no doubt but what they saw it.

Q. Was there any secret about it? A. No, we regarded it as the one thing that could save that country. We had the worst dust storms in history this spring, and the only land making any profit this year is our irrigated land, and I don't believe with buying that fuel that they would make any profit.

Q. That is all.

Cross Examination

Q. (By Mr. Williams) But you didn't see fit yourself to go to the Phillips Petroleum Company and talk to them about the matter. A. I did in exactly the same manner as we carried on our operations with Skelly. We talked to the about the first well when we drilled and I talked to your company about the first well when I drilled it.

Q. And each month you sent the Skelly company a statement of the hours that the engine ran on the pump, did you not? A. No, sir. Each six months when they requested it, when they called up and requested it.

Q. Did you ever send the Phillips Petroleum Company a

statement of the number of hours on the Place lease or Knott lease until within the last month? A. They did not so request it.

Q. This whole matter of the use of gas is solely a
268] matter of the Phillips Petroleum Company by their own eyes finding it out and coming to you for the information, is that right? A. No, sir.

Q. On the drilling of the first well you did go and talk to the Phillips Petroleum Company, did you not?

A. That was the first well we drilled.

Q. And you went through the formality of executing a written contract? A. After several months operation of the well.

Q. I hand you what has been identified as Defendant's Exhibit B, and ask you to state if that is a true copy of the agreement you entered into? A. That is my signature and I suppose it is a true copy.

Q. Well now, it is a true copy, isn't it?

A. In so far as I recall.

Q. Your counsel stipulated that Exhibit B is a true copy of the contract.

Mr. Williams: Will you so stipulate that Exhibit B is a true copy of the contract?

Mr. Sweet: Yes, sir.

269] Q. Does this contract provide the gas can be used for a period of one year, and that then either party can terminate it on thirty days notice? A. As I recall, it does. It was indicated it would be carried on from year to year and I had every belief it would be.

Q. Your belief that the use of gas on these other places would be on the same terms and conditions?

A. I had no reason to believe otherwise.

Q. And it would be for one year with the right of either party to terminate on thirty days written notice.

A. I didn't think that the Phillips Petroleum Company would see fit to cut off the poor drouth-stricken farmers.

Q. But that is what the contract provides, isn't it?

A. In our business you can't put everything on paper.

Q. My question is, that is what the contract provides.

The Court: Is this contract involved in this case?

Mr. Williams: He says the condition on which he expects this gas is on the same terms and conditions.

Q. (By the Court) Have they served notice at the end of the year to terminate this contract?

A. (The witness) They have.

Mr. Williams: We would like to offer in evidence
270] Defendant's Exhibit B.

The Court: Very well.

Q. (By Mr. Williams) You have been served with notice of the termination of that contract?

A. Yes, sir.

Q. And you have been served with notice to discontinue taking gas on the Place and Knott leases? A. Yes, sir.

Q. And more than a year has expired? A. Yes, sir.

Q. And if you had entered into a contract with the Phillips Petroleum Company on terms you say and you assume they would enter into it with you, such a contract would now be consummated? A. It would if they notified me.

Q. And under the terms of this contract, you agree that at the end of the year they could so terminate it?

A. Under that contract that might be so, but you and I are both 21 and we know business is not conducted wholly on a contractual basis.

Q. In other words, in these lawsuits you are not claiming on the basis of any contract?

A. I am claiming to get what is right for both parties.

Q. Did you have any conversation with Dale Lewis wherein he agreed you could have this gas?

A. I didn't have any conversation where he said I could
271] not have it.

Q. Did you ever have any conversation with him where he said you could? A. No, sir.

Q. You never had any conversation with any representative in a supervisory capacity of the Phillips Petroleum Company in respect to the use of the gas on these tracts of land?

A. Sir, I have never had any experience with the Phillips Petroleum Company. The hydro-carbon over there --

Q. Read the question.

(Question read.)

A. I was acting on the assumption of the practice and policy of the Phillips Petroleum Company and all the other gas companies in that area.

Q. Now this practice and policy that you are talking about, how many instances comprise that practice and policy? Name them. A. The water wells drilled up to that time.

Q. Did that include Mr. Phillipi?

A. Yes, sir.

Q. He had a contract just like you had a contract, didn't he? A. Yes, sir. He received that contract after he had operated that well a number of months, I believe.

Q. And your Hitch-O contract?

272] A. Yes, sir.

Q. Can you name up to that time any other instances in Texas County, Oklahoma, where the Phillips Petroleum Company had engaged in this so-called practice?

A. Practices have to start somewhere.

Q. Two instances and both under written contract. Is that the practice? A. And other operations in other areas.

The Court: What does your lease provide with reference to using gas for domestic purposes?

Mr. Williams: Was the Court addressing the question to me?

The Court: Yes, to the attorneys.

Mr. Williams: We have the leases here. They provide the lessors may have gas for their stoves and inside lines in the principal dwelling house on the lease premises by making their own connection with the well.

The Court: Any other provision?

Mr. Williams: That is the only reservation of any right on the part of the lessor to use gas. I suppose counsel will stipulate with us that is true.

273] Mr. Crowe: It has another provision that gas is furnished free. It just covers free gas.

Mr. Williams: But you will agree there is no other provision in the lease reserving to the lessor the right to

use gas free or that it be taken for any other purpose?

Mr. Crowe: I think that is right.

The Court: The leases will speak for themselves.

Mr. Sweet: That is correct. There is no reservation in the lease.

Mr. Williams: Or for any purpose except domestic purposes.

Mr. Sweet: There is no reservation giving them the right to use the gas for any purpose other than domestic purposes.

Mr. Williams: Free of charge in the principal dwelling house.

Q. (By Mr. Williams) You talk about the use of other types of fuel. You yourself have made no investigation as to the availability of those fuels or their cost or the profit that can be made from their use?

A. (The witness) I called up the Phillips 66 bulk dealer and asked him what the fuel cost would be. He says they tell you that fuel cost is ten times the cost of natural gas but he said I will tell you it is a lot more than ten times. He is a man of integrity I presume. We buy a lot of stuff from him. According to his report it is from ten to twenty times what the use of natural gas is.

Q. In the management of these properties, you haven't taken your pen and pencil and sat down yourself with various suppliers, getting figures and the amounts and studying the profit and loss of them to know what the answer would be; have you? A. I assumed if it was going to cost $25.00 a day for fuel, that is all I was going to make off the well in a year. I would be more than satisfied.

Q. You say it would cost you $25.00 a day. Is that an estimate or what somebody told you? A. That is an estimate based on what experienced men told me.

Q. But you yourself haven't calculated it based on fuel costs? A. I regarded their experience as being more reliable than my pencil.

Redirect Examination

Q. (By Mr. Sweet) There has been some intimation here you were trying to steal all that gas. I will ask you to state whether or not within the last two months you have sent to the Phillips Petroleum Company for gas consumed on the Place irrigation well No. 6, the sum of $645.00?

A. I believe that was the amount of the check.

275] Q. And irrigation Place No. 7; $435.00?

A. Yes.

Q. And the Knott irrigation well No. 10, the sum of $240.00? A. That is right.

Q. And the Carro well? A. That is not a part of the lawsuit.

Q. You also paid them $217.00?

A. Yes.

Q. Did you ever have any idea of stealing that gas?

A. No, sir. We asked to pay for that gas.

Q. Was there any secrecy about any of your actions in connecting up to the well? A. No, sir.

Q. Do you think the boys there at Phillips actually thought you were trying to steal it? A. I don't believe they did.

Q. On this other written lease you said, I believe, they had given you notice they wanted to cancel it. About when was that? Do you know?

A. Well, it was, I presume it was thirty days before the end of the expiration of the lease.

Q. Have they, in fact, disconnected it?

A. They have not.

276] Q. You are taking gas from the wells located on the Phillips lease? A. We are.

Q. What is it you buy from Phillips Petroleum Company?

A. We buy Butane, propane, Diesel and ammonia nitrate.

Q. What do you do with butane and propane?

A. Use it to power tractors.

Q. What is that ammonia nitrate?

A. That is a fertilizer. They have a plant out there at Cactus and we use quite a few thousand pounds a year. We use about fifteen or twenty thousand pounds a year.

Q. (By Mr. Williams) Your tender of payment within the last two weeks could not have been to avoid an embarrassing position in this case by not having paid?

A. We did not. My brother-in-law takes care of the books.

We thought you had received payment when you requested for the hours on the well. That was the first request you sent in. We receive a request from Skelly every six months.

(Witness excused)

Mr. Sweet: The plaintiffs rest, your Honor.

277] Mr. Williams: For the purpose of the record, the defendant in these two cases, Nos. 6016 and 6017 moves to dismiss on the ground that neither the complaint or evidence introduced are sufficient to establish a claim in favor of the plaintiffs on which they are entitled to relief.

The Court: Overruled and exception allowed.

Mr. Williams: The defendant, the Phillips Petroleum Company, is willing to stipulate in these cases that in Case No. 6018, the Hitch Land and Cattle Company cases, that Henry Hitch, one of the plaintiffs, is the owner of the surface and royalty in and to the west half of section 34, 1-0-16 east, Texas County, Oklahoma, and the Hitch Land and Cattle Company owns the surface and royalty underlying the southeast quarter of that section except for certain town lots in the townsite of Hitchland which are not material to this litigation; that in Case 6015, the case of Mayoe Porter Buster vs. The Phillips Petroleum Company and her husband, Robert Buster, are the owners of the surface and royalty in and to the northeast quarter of section 28, 2-0, 15-east, Texas County, Oklahoma.

278] That in Case No. 6016, being the case of H. C. Hitch, Jr. and wife vs. Phillips Petroleum Company, the plaintiffs own the east half of section 20, township 20-range 15 East in Texas County, Oklahoma.

That in Case No. 6017, that of Henry C. Hitch and wife, plaintiffs, vs. the Phillips Petroleum Company, the surface and royalty or the entire section 6, 1 north, 16 east is owned by the plaintiffs.

It is further stipulated that on each of those sections the Phillips Petroleum Company has a producing gas well, and it is further stipulated on each of those sections the Phillips Petroleum Company has existing oil, gas and mining leases.

I think there is one other thing it would not hurt to put in the record for reference purposes. In case we have referred to some of these sections by the well name, we stipulate as to those names, so when we find a reference to the Knott well, we will know which particular well we are talking about.

It is stipulated that the section of land involved in Case No. 6018, the Hitch Land and Cattle Company case, that the lease and well of the Phillips Petroleum Company is known as the Timmons well.

279] That the gas well involved in Case No. 6015, the Buster case, is known as the Mayoe well, and that the well and lease involved in Case No. 6016, the case of H. C. Hitch, Jr. is known as the Knott well and lease, and that the lease and well involved in Case 6017, that of Henry C. Hitch as plaintiff is known as the Place well and lease.

We would like to ask counsel for the plaintiffs to stipulate and agree, and I will state to them the information I am about to relate is correct, as reflected by our lease files; that the instrument that has been marked as Exhibit C is a copy of the oil and gas lease executed by the Hitch Land and Cattle Company covering the southeast portion of section 34, township 10, range 16 east, ECM, and is typical of the leases held by the Phillips Petroleum Company covering the land involved in Case No. 6016, 6015 and 6018 and that the instrument that has been marked as Defendant's Exhibit D is a true and correct copy of the oil and gas lease covering the section of land involved in Case 6017, which is the Place lease. We would like with that stipulation to offer in evidence Defendant's Exhibits C and D.

The Court: They will be admitted.

Mr. Williams: We have all the leases and I didn't want to unduly burden the record.

280]

R. B. STEWART, called as a witness on behalf of the defendants, testified as follows:

Direct Examination

Q. State your name. A. R. B. Stewart.

Q. You live at Bartlesville, Oklahoma?

A. Yes, sir.

Q. You are associated with the Phillips Petroleum Company? A. Yes, sir.

Q. In what capacity? A. I am the assistant manager of the Natural Gas Department.

Q. How long have you held that position?

A. Since March of 1951.

Q. Prior to that date what was your position?

A. Immediately prior to that I was employed in the Natural Gas Division of the Gasoline and Gas Department; did engineering work for that division. I have worked for Phillips for seventeen years and all of the time has been in the Natural Gas and Gasoline Department.

Q. The manager of the Natural Gas Department is whom?

A. A. M. Ripple.

Q. And you are his assistant? A. That is correct.

Q. State briefly your duties and, particularly, your

281] knowledge and information covering matters pertaining to the Texas and Oklahoma Panhandle area.

A. Well, my duties are to assist Mr. Ripple; of course, I'd say in running or managing the Natural Gas Department. The duties of the Gas Department are to produce gas; to gather the gas and bring it to the plant for processing of that gas by the Gasoline Department, and for negotiating the contracts for the sale of that gas and policing the terms of that contract, seeing that the terms of those contracts are complied with. That, I believe, in general describes our duties.

Q. Does the Natural Gas Department have any connection or supervision over the company's wells, gathering systems, and so forth in Texas County, Oklahoma? A. Yes. Those are all charged to the Natural Gas Department investment and are in our custody and we operate them.

Q. And your information pertaining to the department relates to those properties? A. Would you ask that question again?

Q. Do your duties and information in relation to the Gas Department relate to those properties? A. Yes.

282] Q. Mr. Stewart, do you know what your company has done in the way of furnishing the gas for the use of irrigation fuel in the Oklahoma and Texas Panhandle?

A. Yes, I am familiar with that. Several years ago, I believe it was about 1950, we got a request from the Hitch people who owned royalty under and on many sections of our lamp up there, their leases, for gas to serve an irrigation well. We considered the matter as to whether we should or should not furnish gas to them as lessors, and desiring to accommodate our lessors to the greatest extent possible, which we have tried to do in every case that we can, we decided that that we would permit that use of gas under a contract which we drew up providing for a one-year term and to run from year to year thereafter unless terminated by a thirty day notice prior to the anniversary date, and it provided for one percent maximum of the well allowable to be used for that purpose. From time to time after that we had similar requests, and we had a total of eight contracts of that nature and they were all on identical terms, but we also visualized that we might not be able to continue the business of furnishing gas to lessors for irrigation purposes because we have somewhere in the neighborhood of a thousand gas wells located in Oklahoma and the Texas Panhandle and we could see where it was going to be such a cumbersome thing and such a large gas consuming thing that the company could not stand it, so we instructed our field men that if anyone wanted gas for irrigation and he was a royalty owner that he would have to execute one of these form contracts which we had printed --

Q. (By Mr. Sweet) Was that instruction made known to the plaintiffs in this case? A. It was on the initial contract. That one was, I believe, the Hitch-O, which is not in this case, but I don't know that it was announced to them. They were furnished a contract on the first well and did execute that contract.

Q. And the four cases involved here, that instruction was never imparted to the plaintiffs in connection with the wells involved in these cases. A. Do you mean the instructions that they would have to sign a contract?

Q. The instructions your company gave Mr. Lewis?

A. I can only go by what Mr. Lewis days in that regard. The company did not itself from Bartlesville advise the Hitches.

Mr. Sweet: We will object to the testimony from this witness, if your Honor please.

The Court: Overruled. If there is any incompetent evidence introduced the Court will ignore it.

284] Mr. Williams: I might suggest we certainly have the right to show what the authority of the employees was. The question of whether or not that was imparted to someone else is another question.

A. (The witness) I believe I stated in my testimony that we had office form contracts printed and advised our field personnel that anyone wanting irrigation gas, if they were a royalty owner, they should be given one of these forms and told to sign it and it would be sent to Bartlesville for consideration. We felt we had to keep control of it, and that was the basic purpose of putting the year in with the right to terminate on thirty days notice on any anniversary date.

Q. You said eight such contracts were entered into by the company? A. Yes, sir, that is right. There were six different groups of royalty owners or individuals, I might say. Some of them were in Moore County, Texas; some were in Hansford County and I believe there were some in Texas County, Oklahoma.

Q. You say they were all on an identical form?

A. Yes, sir.

Q. Was that on the contract that the Busters signed which was introduced in evidence as Defendant's Exhibit A?

A. Yes, sir.

285] Q. And the same form of contract was executed by Henry C. Hitch, Jr., introduced in evidence as Exhibit B?

A. Yes, sir.

Q. You have copies of all the other contracts here in the courtroom today, have you not?

A. That is correct, yes, sir.

Q. To avoid encumbering the record with all the duplicate copies, I will ask you if you have a list of all those contracts showing the contract number, the buyer, the lease affected. I note here a column, "Cancelled, effective date." Disregard that for the moment. You do have a list of those contracts? A. That is right, yes, sir.

Q. Is that what you have in your hand?

A. That is correct.

Mr. Williams: Copies of all these contracts have been furnished to the plaintiffs in this case.

Q. (By Mr. Williams) The instrument the Clerk has marked

Defendant's Exhibit D, is that the list?

A. Yes, sir. This is the list of our executed contracts for use of irrigation gas in the Panhandle area.

Mr. Williams: We introduce in evidence Defendant's Exhibit D or E. I addressed my statement a moment ago to you but I will now address it to counsel. Plaintiffs have been furnished with copies of each of these contracts?

286] Mr. Sweet: Yes, sir.

Q. (By Mr. Williams) It has been stated in this trial that the Phillips Petroleum Company has had the policy and practice of furnishing gas for irrigation purposes to all of its lessors. Are these eight contracts listed on Exhibit E the extent of that practice? A. Yes, sir.

Q. If you call it a practice.

A. That is correct. That is the extent of the practice of making those arrangements.

Q. You have here a detail of the circumstances under which that came about? A. That is correct.

Q. There on Exhibit E, I noticed in the last column it says "Cancelled effective." What do the dates in that column indicate? A. Well, that indicates the date when the last use of gas under those contracts should have been made. Each and every one of those contracts, the Phillips Petroleum Company sent notices to each of the other participants in the contract that it was terminating those contracts under the terms of the contract giving at least thirty days notice prior to the anniversay date of the contract.

Q. Do you know of any other authorized connections or
287] use of gas for this purpose from wells of the Phillips Petroleum Company other than those shown on this list?

A. No, sir, unless there were some many years ago that have been terminated prior to this time. There have been none in effect since the date of the first one of those except those.

Q. (By the Court) Do you know the percent of the production of any one of these wells, say the Hitch well for instance, what percent of that was actually used for irrigation?

A. No, sir, I don't, but it was a relatively small percent. It was limited by the contract at least to one percent. I don't know whether the actual usage exceeded the one percent or not.

Q. What percent of the production of gas did the royalty owner hold? A. I didn't understand your question, I am afraid.

Q. What is his interest in the production of gas from any well? A. It is my understanding his interest in the production of gas is only a payment measured by one-eighth of the gas; that he doesn't have any interest in the gas other than the right to use it for his principal dwelling, which he reserved.

Q. He would own one-eighth of the gas subject to the provision you mentioned? A. Well, it is not my understanding that he owns any of the gas except that he reserved some for his principal dwelling, and did not convey to us by lease.

I understand that he conveyed to us all of the gas that
288] underlaid these properties, and he was to be paid a royalty measured by one-eighth of the value of the gas wells; I might say in that respect, the decisions in Oklahoma are clear that under this form of oil and gas lease, the lessor does not reserve title to any of the gas, and the payment is cash royalty payment measured by the portion of the gas produced. Many oil leases do reserve to the lessor one-eighth of the oil with the right to have it delivered into the pipeline in question but not so as to gas. I might say there is a very definite reason for that because the marketing of gas presents a very technical problem as distinguished from oil. Oil can be taken away in a bucket or tank truck and put into a tank. Gas cannot be and when marketed it must be handled as a unit, hence the lessee assumes that right and responsibility, agreeing to pay the cash royalty.

Q. (By Mr. Williams) Now, Mr. Stewart, some discussion was had yesterday as to the discontinuance of furnishing of gas for this purpose in these instances by the company. Would you briefly outline to the Court some of the facts and circumstances pertaining to that discontinuance and why.

A. Well, as I said, we thought from the very outset
289] that we should keep pretty close control over any agreement for the sale of this gas because we have a great many commitments out of the Panhandle field, contractual commitments that were entered into with a great many for a long term of years and we have worked a great many years to get our gas marketed out there and at the moment we have it marketed, and most of it is under long term contracts, and, of course, we have considerable requirements in our own manufacturing operations so we felt we should watch this pretty carefully as to how much gas we might be getting into these irrigation

projects or use and early in 1953 we got several reports from our office in Amarillo and others in the Panhandle. In fact, I believe we began to get some letters requesting that we furnish irrigation gas to a great number of ranchers in that area. I am not sure that the original request was limited to this, to those who had owned royalty, but just to furnish gas from our wells for irrigation purposes out there, and knowing that on the south plains there are possibly as many as twenty-five thousand irrigation wells, we made a short study. I will say we did not do this thing lightly because we did not want to create any hard feelings in the Panhandle between ~~us and~~ our royalty owners. We have always had good relations and tried to help each other, but we could see from our investigation the quantity of gas we might put out in the Panhandle area and not limited to Texas County but to counties adjoining in the ranchland adjoining that there might be as much as fifty million cubic feet of gas a day consumed for irrigation purposes. The Phillips Petroleum Company could not begin to supply that much gas for that purpose over and above the commitments which it had made for long term contracts and its own requirements to keep its facilities running out there. Also, the demand for this gas, we would have no feel of when it might or might not be on the line and it might upset our complete situation. Our gathering system extends over five or six or more counties out there, so I say we did not consider this thing lightly. We spent, I guess, about two months considering what we should do next.

Q. This gas from these wells, in that area, what is done with that gas by the Phillips Petroleum Company with respect to processing? A. Practically all the gas we produce in the Panhandle field is run through our natural gasoline plants which extract the hydro-carbons.

Q. Do you have a big investment in these plants?

A. Yes, sir, we have several million dollars invested in those plants.

Q. This gas taken for irrigation purposes, would that be before or after it is processed?

A. On the basis of the requests we have had, and on the basis of the contracts, we have signed heretofore and subsequently cancelled, that gas would be raw, unprocessed gas, taken at the well head and would not go through the gasoline plant. Therefore, we would have received nothing for the liquid hydro-carbon content of the gas.

Q. What business is your company engaged in in this area

other than the distribution and sale of gas?

A. It is engaged in the production of the natural gas and gathering of the natural gas, generally to a central point for processing and removal of the hydro-carbons and the sale of the remaining residue gas under contracts of varying terms, varying prices. Then, of course, the natural gasoline, we are in the business of further refining the natural gasoline along with our oil.

Q. Is your company engaged in any way in the business of distributing or selling gas from this gas gathering system from these wells other than the wholesale sales of residues at the plant? A. No, sir, not in the general distribtuion business and we do not intend to go into the general distribution of natural gas.

Q. The gas from this particular area is known as your Hansford system or area? A. That is correct.

Q. Is there any particular disposition made of that gas after processing? A. The gas from the Hansford area is all dedicated to the Panhandle Eastern Pipeline Company, and after processing that gas is delivered to the Panhandle Eastern Pipeline Company.

Q. You say "dedicated". Is that for a particular time?

A. Yes, it is dedicated for the life of the properties.

Q. Was there any exception made in the dedication of the right of the Phillips Petroleum Company to have and to use the gas for any other purposes?

A. No. The only reservation so far as the lessors are concerned, is the reservation for use, to furnish the lessors the gas they reserved unto themselves in their original leases.

Q. That is, for domestic use in the principal dwelling
293] house or domestic use?

Q. That is all.

Q. (By the Court) Did it ever occur to you if one of these lessors wanted to drill a well, and he went to your representative and told him what he had in mind and he was informed by your representative to go ahead and drill his well, and that the gas would be available to him, that if you were not able to furnish the gas that he would be injured, damaged?

A. No, sir, because of the fact we did have some contracts in the area which provided we could terminate in a year and we did not feel that anyone would be injured if they were willing to enter into contracts for a year, and if they took any gas arbitrarily or without authority or without executing a contract or without investigating it further, that they

would be perhaps be willing to run the risk.

Q. But take a farmer, before he drilled a well, he went to your superintendent out there and told him what he had in mind and that they could not afford to drill that well unless they could get gas. Your man told him to go ahead and drill the well and that gas would be available to him. I am just assuming a situation. Nothing was said about a year or of your right to cut it off in a year, and if he went ahead and spent $15,000 or $20,000 to drill a well and perhaps and perhaps they like a man to furnish equipment for his farming operations, contemplating the use of irrigation, did it ever occur to you to cut him off at the end of the year would be a serious loss to him.

A. Only so far as -- I might say this, he may have brought it on himself. Most of the ranchers in this country, and most of our royalty owners are pretty substantial people and are pretty wise in their business dealings, and I would naturally assume they would investigate the basis on which they could have gas furnished them.

Q. Well, assuming they said, "We can't afford to drill this well, we will not drill it because it is an expensive proposition. We will not drill that well unless we can get gas." Your man says, "The gas will be available to you." Now nothing was said, we will say, about being for a year or your right to stop the use of the gas at the end of a year, but he merely says; "We will arrange a written contract for you to sign later." Now if the farmer assumed he would be able to have the gas as long as he needed it there, produced from his own mine, you mean to say he would not be damaged by cutting it off at the end of a year? A. I would say it is very unfortunate, and of course, it is incredible that may have happened but from my standpoint I feel that he should have investigated the price at which he would have received the gas, how much gas he would be allowed to use. If there was no limit on how many water wells he might have decided to drill, for example.

Q. From what you have stated, that the amount of gas he would use would be more than the amount represented by his royalty interest, you say the minimum of one percent, but you don't know whether it was more than that or not, but it would be less than one-eighth, wouldn't it? A. That would depend. In the case of these wells, I gave that answer, I think perhaps it was a small percent. We had a case or two, I'm sorry but I can't name the particular person who made the

request but in discussing the matter there at Bartlesville, it was covering two sections out there that had a relatively small well on it. Generally, the wells in this area are not very large and some are quite small and in one or two instances there were requests for gas that the indications were that the usage for the horsepower they were going to expel would have required more gas than the well was capable of delivering. That is the reason we felt we had to keep this thing pretty much under control.

Q. Your theory is you cannot afford to sell this gas to these farmers because you want to sell it to somebody else?

A. No, sir, it is because in general, it has already been sold to someone else and we ourselves have built plants. We have quite a large usage. Our estimate of the gas situation there in the Panhandle in the absence of major future discoveries in the Panhandle feel it is pretty well defined. The wells in the Hugoton Field have been pretty well defined which indicates Phillips Petroleum Company is not going to have any excess gas over the next five to eight years, in excess of our commitments and our requirements and then after that time it is going to decline.

Q. Did you take that into consideration when you made these commitments? A. Yes, sir, these earlier ones, that is right and they were made terminable by either party.

Q. These original commitments?

A. The ones we executed. Is that what you mean?

Q. You stated a moment ago you had made commitments, long time commitments to furnish gas. Now at the time you made those commitments, did you take into consideration that you might not have as much gas as you thought you had?

A. Well, those commitments are based upon the availability of the gas but they have certain restrictions in them that require us not to arbitrarily take any gas out from under those contracts, so to speak and they do not allow us -- in other words, strictly they do not allow us to take gas for the use of irrigation or the running of a sawmill or anything else out there. The gas under these contracts -- it is pretty well defined as to how much gas we can use for ourselves, what else we can do with it and when we made those contracts, I think the major part of the larger ones were made about 1943, along or in there, or possibly '45. I feel quite sure I didn't anyway, feel that there would be a tremendous demand from the local ranchers for use of gas for irrigation purposes. In fact, if there had been I don't think we would

have reserved the right in our other contracts because we had no commitment authority from them or to them to make any such commitments.

Q. When you made those commitments you didn't know about this production in the Panhandle, did you?

A. I'm afraid I don't understand that question.

Q. You were not producing from these particular wells in 1943 when you made these original contracts?

A. The contract on this was made in 1943 or 1945, or
298] thereabouts, and we agreed to develop these properties completely and sell the gas from the premises to the Panhandle Eastern Pipeline Company in this particular area.

Q. (By Mr. Williams) As a matter of fact, the development of this area had already begun?

A. In some degree, that is correct.

Q. That is the reason the commitment was made?

A. That is right. It was estimated there were a certain amount of gas reserves, enough to justify the pipeline company to come in there.

Q. In order to build a market in that field it was necessary to commit the gas for that market?

A. Yes, sir, because our leases generally provide if we do not have a market within a certain time the leases terminate, so we are under that commitment from the very beginning to develop a market for the gas from these properties.

Q. The irrigation gas agreement to which you have alluded, provides for the payment for the gas based on the weight, average price per thousand cubic feet received by the Phillips Petroleum Company in the field. Can your company connect up a meter and have an accounting for these irrigation wells at that price at a profit to the company?

A. My answer to that is no. I very seriously doubt it.
299] With all the paper work that has to go on, for the small volume of gas, a $100.00 deposit in these cases for the installation of the meter, we just can't afford to do that at that price. We sell that gas at the plant in tremendous volumes compared to the volumes used here. That is more like a distribution system selling gas, I might say a city utility, which we certainly don't want to get into that type of business.

Q. Was that price arrived at on the basis of a profit to the Phillips Petroleum Company or an accommodation to the lessors? A. It was solely an accommodation arrangement, and we didn't know how far into it we should go, but at the time we made the first ones we thought that would be our position, to accomodate the people.

Q. That is all.

Cross Examination.

Q. (By Mr. Sweet) Mr. Stewart, you say you have been with the Phillips Petroleum Company for seventeen years?

A. Yes, sir, that is correct.

Q. And during all of that time you have been with the Natural Gas Department? A. Yes, before the Natural Gas Department was formed it was the Gasoline and Gas Department and I have been in the various activities of that particular department since I went to work.

Q. Are the Natural Gas and Natural Gasoline Departments now combined? A. No, sir. They were separated in March of 1931 in two separate departments.

Q. Prior to that time you were with the combined departments? A. That is correct.

Q. Of course, you are familiar with the large operations that the Phillips Petroleum Company has in the Oklahoma and Texas Panhandle? A. Yes, sir.

Q. You, of course, have visited that area many times?

A. Yes, sir.

Q. About how many wells do you have in Texas County, Oklahoma? A. That would have to be a guess but I would say somewhere between 250 and 350 wells in Texas County, Oklahoma. That is one well on each section, a 640 acre tract.

Q. One gas well is supposed to take the pro rata gas out of the section on which it is located?

A. That is correct.

301 Q. At the present time that is all the Corporation Commission will let you drill; one well to a section?

A. I believe that is standard spacing, yes, sir.

Q. In the Hitch area, in the area of these wells, about what was the average daily potential, daily production when they were brought in? A. I'm afraid I can't answer that. I didn't watch that particular feature of the business as to how much each well will make. My own remembrance of the wells in this whole area is they were relatively small.

Q. Would you say they vary from four to twelve million per day potential? A. If you are talking about a twenty minute test, I would say that was probably correct.

Q. The wells vary according to location?

A. Yes, sir.

Q. But most of the wells were as large as four million

cubic feet per day capacity, potential?

A. Possibly so, yes.

Q. Some of them went as high as thirty or forty million cubic feet per day? A. I don't recall any that large but there may have been some.

Q. Do you know how many cubic feet of gas per day your company sells, your company processes in the Hansford Plant?

A. Yes, sir, approximately a hundred million feet a day.

Q. A hundred million -- A. Cubic feet a day, approximately. It varies seasonally, but that is an approximate figure.

Q. That is in the Hansford Plant?

A. Yes, sir.

Q. As I understand it, all of these wells in the southeastern Texas County, you produce the gas, gather it across the state line and deliver it to your Hansford Processing Plant? A. Yes, sir.

Q. In the Hitch area? A. Yes, sir, that is right.

Q. There you extract the liquid, hydro-carbon, is that right? A. Yes, sir.

Q. What does that consist of? A. What does the liquid, hydro-carbon consist of?

Q. Yes, sir. A. That consists of a heavier carbon components of the gas which ranges commercially, I would say, from propane down through the hexanes. They get heavier as you go down, but the propane and butane represent the hydrocarbons.

Q. Those hydro-carbons, you market them?

A. It is part of our integrated operations.

Q You pipe some to your plant at Borger, do you not?

A. I believe they are all piped to Borger to be made into different products, which are made down there.

Q. But you market the propane and butane, don't you?

A. We sell propane and butane as such.

Q. Do you make any accounting to the lessors for what you get out of those liquids? A. I don't believe we do as itemized or separated from the rest of the gas.

Q. You don't make any accounting or do you, for what you get for those liquid hydro-carbons, do you?

A. I'm not sure I understand your question. We don't specifically pay them so much for it, for so many gallons of propane that we make out of the gas, if that is what you are asking.

Q. Do you pay them anything for the propane? A. I think so.

Q. Do you render them a statement for it each month, the propane and butane? A. No, we don't do that. We pay our royalty owners on the basis of executed gas royalty agreements. They provide we pay the royalty owner at the weighted average price. However, our residue gas or any other gas sales we make within the area.

Q. Residue gas, that is after the liquid hydro-carbons are taken out? A. That is correct, and there is no charge for gathering or processing or the making of the sale or anything.

Q. Your company contends the cost of processing the natural gas and taking out the liquid hydro-carbons just about equals what you get for them, and you don't make any accounting to the lessors? A. We don't make any separate accounting. We do have agreements with the royalty owners that the way to make payments on that is on the basis of the weighted sale price of the gas.

Q. You say when you first got the Hitch request in 1950 for gas for an irrigation well, you already had a number of contracts out in that area, didn't you, in Texas, in the Texas Panhandle? A. Any irrigation contracts?

Q. Didn't you have contracts with the Freemans before that time? A. I don't like to be too specific because I don't remember which came first. I was thinking the Hitch-O was the first one. I am not positive of that, but we could examine this and see.

Q. You say then you considered the matter at length, the company did? A. Yes, sir.

Q. You are on a policy making level, are you not, Mr. Stewart? A. I am sort of in between. They listen sometimes to what I have to say but my vote doesn't count too much.

Q. You attend the conferences at which the company makes its top level decisions and its top level policies?

A. Not the final ones, which are made by the executive committee. I don't attend that.

Q. At the time you received this Hitch request you say you considered the matter at length, and after considering it you gave him a contract? A. Yes, sir.

Q. After that you gave every one of your lessors who
306] dug an irrigation well a contract up until 1953, didn't you? A. I am not sure that is the case. My timing is perhaps a little hazy but I mentioned awhile ago about a request for some right of way --

Q. Was that in Texas or the Oklahoma Panhandle?
A. That was in Texas.
Q. I am talking about Texas County, Oklahoma, after you gave Mr. Hitch his contract, you let every one of your lessors in Texas County who dug an irrigation well have a contract? A. We let one other man have a contract. I am not sure that was all who dug an irrigation well. I don't know.
Q. You know, as a matter of fact, there were no other requests for abour five months when you cut them all off?
A. I think that is the only one that requested, yes, sir.
Q. You know you did not deny anybody the use of gas up until 1953? A. I think that is right, in the Texas Panhandle.
Q. In Texas County. A. I mean in Texas County. That
307] is correct, but there was quite a gap, if I may add this.
My recollection is, after these contracts were signed there was a period from year to year or more, I'm not positive, but I think that is right, since we had had any requests for gas.
Q. There was a slump in irrigation activities?
A. Apparently so.
Q. But my point is up to the point these wells were dug in Texas County you had not denied any of your lessors a contract to use natural gas?
A. In Texas County?
Q. In Texas County. A. I don't believe we had.
Q. You say all this gas is dedicated to the Panhandle Eastern Pipeline Company? A. Yes, sir.
Q. You sell them dry gas, residue gas out of your Hansford Plant? A. Yes, sir, that is right.
Q. The Panhandle Eastern has not made any complaint about your letting these farmers have natural gas, have they?
A. No, sir.
308] Q. They are willing they have it in so far as you are concerned? A. We had two request forms from the Panhandle to do this thing to start with and they consented to it. They consented but they said they were not going to give it unlimited use; that they wanted us to keep them advised of what the activities were and they would confer on the matter occasionally.
Q. Do you know the Panhandle Eastern is selling gas to farmers from its pipeline that leads from your plant into Detroit, Michigan, don't you? A. Yes, the Panhandle Eastern

is in the business of distributing and selling gas.

Q. You are not contending what these four farmers use for irrigation purposes is cutting down the supply you have to supply the Panhandle with, do you?

A. To the extent that the Panhandle is making any complaint, no, because the amount of gas used by these four wells is an insignificant amount of gas, but I want to make one point clear and that is, we have tried to accommodate all that we felt we could until the time has come now, where there is evidence that there is going to be a tremendous demand for this thing and if we continue to let one royalty owner have gas for irrigating his lands, we feel we will be in a worse position than we are in denying that one, and they would probably accuse us of discrimination.

Q. Don't you recognize a distinction between a man who
309] has spent $15,000 or $20,000 in drilling a well relying on the fact that he would have a right to use natural gas from the man who knows in advance he can't get it and spends no money in drilling a well upon that assurance?

A. Well, I don't think it would stop here. That is the company's difficulty. We don't know that someone might drill a well and get it to our lines, and say they relied on the fact we served people in the past. We have got to draw the line somewhere.

Q. (By the Court) I just want to get one matter clear in my mind. Now take this Timmons well, if the man paid to the Phillips Petroleum Company for the use of that gas for a year, the sum of say $390.00, how many cubic feet would that represent? A. At ten cents a thousand cubic feet. You say $392.00?

Q. $390.00. A. I guess that would be around three and nine-tenths million cubic feet; 3 to 4 million cubic feet.

Q. That is for a year. Now what was the capacity?
310] A. We don't know that is the correct amount used but on that basis that would be it.

Q. (By the Court) What was the production of gas from the Timmons well for a year?

A. I can't answer that but I believe we have some papers that show that.

Mr. Williams: We have a sheet that shows that. I don't know that I can read this.

A. (The witness) I don't know that I can in court.

For the year 1953 is what this shows that we produced from that well 92 million cubic feet of gas for the year. That would be about two to three hundred thousand cubic feet a day.

Q. (By the Court) Now if the amount of gas used by the lessor was three million that would be what percent?

A. That would be about, it looks like about three percent if there was three million. It is something slightly less than a 100 million produced. It looks like three percent on that rough basis, yes, sir.

Q. So the total amount of gas that would be used by the lessors would be approximately three percent of the production of the well.

A. In that particular instance, yes, sir. There are
311] cases I think where the people have wanted to drill several irrigation wells and attach to one gas well.

Q. (By Mr. Sweet) I think the Timmons well is one of the poorest wells in the area. Will you tell the Court how much was taken off the other three wells involved.

A. Yes, sir. The Place well for 1953, it shows the actual production was 52 million cubic feet which would be about 150,000 a day.

Q. (By the Court) 52 million?

A. Roughly 52 million for the year if I interpret this right.

Q. What was the Timmons? A. The Timmons was about 92 million. The Mayoe No. 1 was 106 million and the Knott No. 1 was 106 million, in round figures.

Q. (By Mr. Sweet) Do those exhibits show that you took the full allowable? A. If I interpret this right, this one shows we came within less than one percent of taking the allowable. We took slightly more during that period from the Knott. We took for the year 106,476,000 and the current allowable total for the year was 105 million.

Q. Just give us approximate figures.

312] A. They are never exactly in balance. The Mayoe was 106 million feet, actual production, current allowable, 108 million. The Place well roughly, 52 million produced and the allowable 50 million. The Timmons well 92 million produced and the allowable was 97 million.

Q. On some of the wells you did not take the full allowable? A. During that particular period that is right.

Q. Now, Mr. Stewart, you stated when the question of the discontinuance of the use of gas came up for consulation and consideration by the officials of the Phillips Petroleum

Company, as I understood you, you had three reasons that you gave for wanting to cut these farmers off, and one was that you wanted to keep close control. Number two, your commitments and number three, your requirements in your manufacturing operations.

A. Well, I would have to add another one. I believe I said we do not desire to go into the distribution of natural gas as a general thing.

Q. That is just a policy matter.

Mr. Williams: That is a reason though.

Q. (By Mr. Sweet) That is not an economic reason. It
313] is a policy matter. Is that right?

A. (The witness) It is a policy matter just the same as we want to serve our contractual commitments out there which is a policy matter.

Q. You say around the Panhandle Eastern you are not having any trouble there? A. That is right, at the moment. That is fine and dandy.

Q. The Panhandle Eastern says let these contracts for the gas. In your manufacturing you say you need your liquid hydro-carbons to make your octane gasoline?

A. Yes, sir. We also need fuel gas for our operation there.

Q. You also need the other liquids?

A. Yes, sir. We need the hydro-carbons and fuel and all the components.

Q. Isn't that the primary reason you are objecting, is you will not get the liquid hydro-carbons but of the gas that comes from these lands in which the lessors don't share at all? A. I wouldn't say that at all, that that is the primary reason because our operations out there are quite extensive and our contractual commitments are quite extensive.

Q. We have gotten away from your contractual commitments,
314] the Panhandle Eastern says it is okay.

A. You are talking about the specific area these are located in at the moment. I was talking about the area of our operations out there. The reason on the specific acreage here, I think I made myself clear a minute ago; that this is a matter the company decided we could not discriminate and furnish gas to some royalty owners and not furnish to others out there.

Q. You told Mr. Williams you could not make any money

in selling this gas back to the farmers at what you paid them. Is that right? A. I think that is correct generally that I said that.

Q. But you absolutely refuse to negotiate with them about a price for it, do you not?

A. Yes, because we do not feel we have the gas supply generally in the area. I have tried to explain that.

Q. It is not a price matter. That is not the dispute between you and the farmers, is it? You know they will pay you more money if you will let them have it.

A. Yes, and I think if we decided to let them have it, I think we would probably let them have it on the same basis as we did before. It is not a money making proposition with the Phillips Petroleum Company we ever did it at all. It was a matter of accommodation, if agreements were entered into it is a kind of theoretical thing at the moment what the price might be.

Q. But you will not negotiate with the farmers on the price at all and let them have it now?

A. Or on the volume or contract at all.

Q. You just refuse to negotiate with them on any basis whereby they can get this gas? A. Generally that is correct. We are just not going to sell any gas for irrigation purposes out there.

Q. As a company policy? A. Yes, sir.

Q. You say you offer your sympathy to them but you tell them they brought it on themselves?

A. I am afraid that is my duty.

Q. There are one or two questions I want to ask you. If after extracting the hydro-carbons at your Hansford Plant, the residue you sell to the Panhandle Eastern, if you don't sell a larger volume of residue gas than your meters at the well reflect? A. I don't believe that is correct. I think we generally have some line loss. I couldn't say that exactly because I don't look at the daily figures of our production.

Q. You would be willing to make that positive statement,
316] that the residue gas usually amounts to less than the meter gas at the well? A. That is correct.

Q. How often do you blow those wells?

A. I don't know.

Q. Is that part of your department?

A. It is part of our department but I don't handle that. Our Panhandle Area Superintendent and men that work for him in the field handle that.

Q. Don't you have an idea about how often they blow those gas wells? A. No, sir, I sure don't.

Q. What do they blow them for? A. I know occasionally a well is blown if it is about to water out and they are trying to get it on production and they have to blow the water out but I don't know of any other reason we blow a well.

Q. They don't blow it in connection with taking the allowable? A. No, sir, I don't think so.

Q. As a matter of fact, they used to blow them three or four times a day and all day sometimes and you don't know why that would be? A. Well, they used to test wells that way but they don't do it anymore in the Panhandle.

Q. They would waste more gas in blowing the well than these farmers would use in ten years. You say they don't do that anymore? A. I don't think so but I am not an expert in that field.

317] Mr. Williams: I don't see the materiality of this, but I would like to ask if it is your contention the Phillips Petroleum Company does not pay these royalty owners for this gas they take?

Mr. Sweet: I think under the lease the lessors are entitled to share in all the proceeds.

Mr. Williams: We pay the lessors all the royalty the lease requires to be paid.

Mr. Sweet: Considering the residue as gas from the well you ignore the liquid hydro-carbons you take out.

Redirect Examination

Q. (By Mr. Williams) Your company has paid its lessors in this area all the royalty; all royalties to be paid according to its lease contract or other contract it has with the royalty owners? A. Yes, sir.

Q. (By the Court) That is based on the character of the gas as it comes from the well, isn't it?

A. It is based on the total volume of gas produced from the well, yes.

Q. After you have extracted these other elements from the gas, how much do you get for that gas?

A. Well, at the moment I believe we are collecting 9.862.

Q. What price do you pay the royalty owner at the well?

A. I believe they are paid 9.862.

Q. Then these extracts you take from the well are a clear profit to your company? A. No, we get 9.82 to 9.8 for the residue and we pay the royalty owner that price for the whole stream that comes from these wells which included hydro-carbons if it is a gas well. It is also pursuant to agreement with the royalty owners. That is the basis on which we pay.

Q. I am not discussing the lease. The price you get for the gas after you have extracted these various elements is about the same as you pay the royalty owner?

A. It is the same per thousand cubic feet but not in dollars. If I am not mistaken and I am sure I am not, we pay them the 9.82 for the portion that went to the Panhandle Eastern as residue, and also we pay them 9.82 for the portion condensed into liquids and also for the amount we use for fuel at the plant.

Q. Well, you paid them 9.82 for the gas as it came out of the well. A. It was full volume, yes, sir.

Q. (By Mr. Williams) That is in its raw stage?

A. Yes, sir.

Q. The gas that is sold at the Panhandle Eastern at the plant, that is gas that has been gathered and processed and delivered to the Panhandle Eastern at a central point.

A. That is right with the pledge behind it of some 100 thousand acres or more, I don't know how much for the life of the production.

Q. No charge is made to the royalty owner for that gathering process, but the hydration compression and making the gas marketable that added into the price the Panhandle Eastern pays? A. That is correct.

Recross Examination

Q. (By Mr. Sweet) I believe you said you are an engineer? A. By education and by practice up until a few years ago.

Q. About what is the value of liquid hydro-carbons you take out of a thousand feet of that Texas County gas?

A. Well, that is hard to guess at. The gasoline market
320] fluctuates very widely. I haven't followed this for three or four years.

The Court: I can't hear you.

A. I was saying I haven't followed this for a matter of three or four years, but I believe the present value of twenty-six pound gasoline as quoted in the standard journals that are used as a basis for pricing and for determining prices in making contract, I believe it is in the vicinity of three and four cents a gallon. I think we make around a quarter of a gallon of twenty-six pound gasoline from each thousand cubic feet up there so maybe it is worth a cent.

Q. (By Mr. Sweet) You make more than that.

A. That is twenty-six pound. We make some propane and butane. I am just guessing, but perhaps we make an equal amount of propane and butane. I think that runs somewhere near the same price as the gasoline, so perhaps we get a gross of around two cents for the liquids that come out of that gas.

Q. You would not state over the years the gross value of the production is between three and four cents?

A. I don't know. The value has been higher on twenty-six pound gasoline. It is possible it was fifty percent higher than the figure I used there over the past number of years and that may bring it up to three cents.

Q. That is the gross value of the liquid hydrocarbons you take out of a thousand feet of gas?

A. That is a rough estimate, yes.

Q. As an engineer, suppose a thousand cubic feet of gas there at the well that goes through Hansford and sold. Do you know how much dimunition there is in the supply because of the extraction of the liquids?

A. Because of the full operation I would guess there is approximately seven percent shrinkage.

Q. The taking of the liquids themselves does not cause any dimunition in the supply, does it, in the residue gas? A. If I understand your question the taking of anything out of the gas --

The Court: I am not hearing your answer.

A. I didn't quite understand the question, but the removal of anything from that gas stream will reduce the quantity of gas remaining after its removal.

Q. (By Mr. Sweet) Reduce the weight?

A. And also reduce the volume.

Q. And you say you had an agreement with the farmers

they were not to get anything for these liquid carbons?

A. We have an agreement with them what they are to get; not what they are not to get.

Q. Our clients in this case?

A. Yes, sir.

Q. Do you have a copy of those agreements?

A. No, sir.

Mr. Williams: I realize the liberality of the rules of evidence but we are now trying the entire lawsuit. This is not material to the issues involved in this suit as to their rights under their contracts as to what we pay them as royalty. In answer to this particular question I might say to Mr. Sweet that we do have the record here. Your clients did at one time sign such royalty agreements but they have since been cancelled. There is no agreement now other than the lease contracts.

Mr. Sweet: Do you have a copy of all the agreements?

Mr. Williams: I have a typical form, but I can't see that it has a thing in the world to do with the issues in this lawsuit.

Mr. Sweet: I believe that is all.

(Witness excused.)

323] W. S. ETCHITSON, called as a witness by the defendant, testified as follows:

Direct Examination

Q. (By Mr. Williams) State your name.

A. W. S. Etchitson.

Q. Where do you live? A. I live in Borger, Texas.

Q. You are associated with the Phillips Petroleum Company? A. I am.

Q. In what capacity? A. District Superintendent of the Panhandle District, Natural Gas Department.

Q. What is included in the Panhandle District of the Natural Gas Department? A. Both the Hugoton and Texas gas fields.

Q. That includes the area involved in these cases?

A. Yes, sir. The Hugoton Field consists, our operations extend over the Hugoton Field which is in Oklahoma and Texas.

Q. In your position what are your duties?

A. My responsibilities are for the operation and maintenance of our pipeline gathering system, production of gas from gas wells.

Q. Do you know a man by the name of Dale Lewis?

324| A. I do.

Q. Does he work for you or is he under your supervision?

A. Mr. Lewis is our Superintendent for the Hansford area and does work under my supervision.

Q. Reports directly to you? A. No, he reports to our Operation Superintendent who in turn reports to me.

Q. As Superintendent of that district what are your duties or what authority do you have in respect to the furnishing of gas to lessors for irrigation purposes.

A. Well, in my position I have no authority for furnishing gas for irrigation purposes. However, for a while we were issuing form contracts and those all were handled through my office. I think all eight came through my office for transmittal to Bartlesville and that is the only connection we had with those.

Q. Did you as District Superintendent have any authority to negotiate any of those contracts?

A. No, sir. They have never delegated that authority to me.

Q. Did Mr. Dale Lewis, working in your department under you have any such authority? A. No, sir, I'm sure that Mr. Lewis did not have.

Q. What was his authority in respect to these con-

325| tracts?

Mr. Sweet: We object to that as calling for a conclusion of the witness.

The Court: I don't how this witness would know, but go ahead and answer the question.

A. Well, the authority that was given Mr. Lewis was to submit the contracts.

Q. (By the Court) He did what? A. Mr. Lewis had the authority to issue a contract to the royalty owner provided he was making a request for gas for irrigation purposes

and after he secured a signature why they were submitted to my office and I sent them in to our main office for approval.

Q. (By Mr. Williams) When you say "issue a contract", did you mean make a contract or merely submit to them a form of contract? A. No, sir, we had a form contract and those were in all our offices out in the field. If a person came in and wanted gas for irrigation, I know of no occasion where we didn't take his application and submit it to Bartlesville. We still have those forms in our offices, form contracts.

Q. Did the man who submitted the contract to the lessors
326] have the authority to make an agreement with the lessors for the use of the gas? A. No, sir, he did not.

Q. Are you the one that gave the authority to these men in this respect? A. I did not have the authority to negotiate any contract for the sale of irrigation gas, therefore, I had no authority to hand down instructions to the field men to negotiate contracts.

Q. But were their instructions given through you and your office, your field men? A. I don't understand your question.

Q. Who gave them their instructions? A. Our Field Superintendent.

Q. And yourself? A. I did.

Q. What were those instructions you gave them? That would be their authority, wouldn't it?

Mr. Crowe: For the record, may I object to this evidence for the reason there is no showing that the plaintiffs had any knowledge of any instructions this man may have given.

327] The Court: The Court will consider that. Go ahead and answer the question.

Q. (By Mr. Williams) What were those instructions?

A. Those instructions were to the effect to make those contracts available to people that were making application for gas for irrigation purposes, if they cared to buy gas as was outlined in the contract, they should attach a check for a $100.00, which included connection costs, and we would submit those contracts. They were to submit those contracts, our superintendents were, to my office. When those contracts got to my office I mailed them directly into my superior in Bartlesville along with the check, and there were some

eight contracts submitted in that manner and approved. Our field men are provided connections, a stub to the valve. I heard testimony yesterday where they may have helped connect. I do not have that knowledge. I did hear it in the testimony yesterday. They could have very well helped.

Q. Did your Field Superintendent have any authority to furnish gas to any lessor without the execution of a contract signed in Bartlesville?

A. No, sir, they did not.

Cross Examination

Q. (By Mr. Sweet) If I owned a farm in Texas County and the Phillips Petroleum Company had a lease on it, and I drilled an irrigation well and wanted to get gas to power it, who would have been the man for me to see?

A. Well, I should say you should have seen Dale Lewis.

328] (Witness excused.)

DALE LEWIS, called as a witness on behalf of the defendant, testified as follows:

Q. (By Mr. Williams) Your name is Dale Lewis?

A. That is right.

Q. Where do you live? A. I live approximately fifteen miles south of Guymon in Hansford County, Texas, at the Hansford Plant.

Q. You are associated with the Phillips Petroleum Company? A. That is right.

Q. In what capacity? A. As Area Superintendent.

Q. What is included within your area?

A. The operation of Sherman and the Hansford gathering systems.

Q. That includes the wells and the gas fields in Texas County? A. Yes, sir. It also includes the maintenance of roads and maintenance of pipe line and measurement of gas.

Q. What were your instructions or your authority with respect to furnishing that gas for irrigation purposes?

A. My authority as far as irrigation went was as

329] errand boy. I submitted contracts to those who wanted gas and in each case those persons knew that I had no authority to sign that contract or to make it binding upon the company.

Mr. Sweet: We object to that as being a voluntary statement of the witness.

The Court: He was just stating what he said.

Q. (By Mr. Williams) Proceed.

A. We also make that clear on our residence fuel, which I understand is in the original contract. We never tell anyone that they can have residence fuel. We tell them we will make application for it.

Q. When you get those applications for residence fuel or a contract for irrigation gas, what did you do with them?

A. I put them through the Borger office and Bartlesville.

Q. Have you ever negotiated any contract for the furnishing of gas for irrigation purposes?

A. As I understand the negotiating of a contract, I
330 have not. All I have done is furnish the form contract to the individual.

Q. Have you ever told anyone they could use gas for irrigation purposes without a signed contract approved in Bartlesville?: A. No, sir.

Q. Mr. Lewis, there was some testimony here yesterday as to a conversation you had with Mr. Lee and Mr. Hitch in December of 1952 or in January of 1953, either one. Do you recall any such conversations? A. I recall a conversation with Mr. Lee in my office, the conversation between Mr. Lee and I.

Q. (By the Court) When was that?

A. That was after the first of the year, 1953, the exact date I couldn't say. George Hitch was ir all probablity there but he did not enter into the conversation.

Q. (By Mr. Williams) Relate to the Court that conversation. A. Mr. Lee described the land in section 34 and said they were thinking about drilling an irrigation well there, and he asked me could he get the gas if he decided to drill the well. I told Mr. Lee at that time that we had other contracts in the area, and if he owned the royalty under the land I felt certain that he probably could get a contract and get the gas, but I said we do have a form contract that must be signed in order to get the gas, and it is the same contract that is signed by these other fellows that are taking gas under contracts.

Q. Did you furnish him such a form of contract at that time? A. To my knowledge I did not because Mr. Lee told me

there was some other parties interested in the section, and he didn't know yet whether they would drill the well or not.

Q. What further was said in the conversation?

A. He said, "If I decide to drill the well, I will come back and see you later."

Q. Anything else? A. I believe that is all I remember that was said.

Q. That is all you remember that was said in that conversation. When did you see either Mr. Lee or Mr. Hitch again? A. Except for a casual meeting with Mr. Lee, the next time I saw him was July 25, 1953.

Q. What was the occasion of that meeting?

332] A. On this occasion he said that he was ready to sign a contract and I told him that I had instructions not to send anymore contracts through.

Q. What was said? A. That was just about all that was said. At this time I definitely remember Mr. Hitch being with Mr. Lee.

Q. They both left the office? A. That is right.

Q. To your memory is that the extent of the conversation you had with Mr. Lee or Mr. Hitch regarding the irrigation well on the Timmons section? A. That is right.

Q. Now, Mr. Lewis, you heard the testimony of Mr. and Mrs. Buster in regard to a conversation they say you had with them in December of 1952 at their home.

A. I didn't get the question exactly.

Q. Do you recall their testimony yesterday?

A. Yes, sir.

Q. As to the conversation they say you had with them in their home in 1952? A. As I remember the testimony it was the early part of 1953.

Q. The Busters? A. Yes, sir.

333] Q. That was December, 1952, was it not?

A. No, I don't remember that testimony; not in December, 1952.

Q. You recall their testimony in regard to the first conversation they say they had with you in their home?

A. I do.

Q. Do you recall that meeting and that conversation, Mr. Lewis? A. The first meeting I recall having been in Mr. Buster's home was probably in March of 1953.

Q. Do you recall any conversation with Mr. or Mrs. Buster prior to that time? A. No, sir.

Q. What was the occasion of the meeting or conversation

with them in their home in March of 1953?

A. I presented a form of contract for their approval to be sent to Bartlesville.

Q. Did you know Mr. Buster prior to that time?

A. I introduced myself to Mr. Buster at that time. I knew him when I would see him because of the fact he had parts in the May day parades at Guymon.

The Court: I am not getting your testimony.

A. I introduced myself to Mr. Buster at that time. I knew him but I don't know whether he knew me or not.

Q. (By Mr. Williams) That was in March of 1953?

334] A. It was approximately that time. It was after the well was completed and the gas was being used.

Q. What was said in that conversation?

A. I told Mr. Buster that we had the contract and we would like for him to look the contract over and if he so desired to talk it over with his lawyer and he could call me and we could get together on it again.

Q. Did you get together with him again?

A. Yes, sir, I did. Sometime after that I contacted Mr. Buster again and he was not satisfied with two points in the contract. That was the one percent volume and the one year clause in the contract.

Q. What did you tell him? A. I told Mr. Buster I had no authority to change any part of the contract. He asked me if I would check and find out if that part could be changed, which I did, and went back to see him at a later date.

Q. Did you go back to see him at a later date?

A. Yes, sir.

Q. What occurred or what was said at that time?

A. I called my office at Borger and they said that was a form contract and it could not be changed, and I also in the meantime had heard rumors that possibly the Phillips Petroleum Company would not furnish anymore irrigation gas.

Q. Did you convey that information to Mr. Buster?

335] A. I did. I conveyed that information to Mr. Buster and told him I would like to get the contract signed and sent in and see what would happen to it, to see if the grapevine was true or if the contract would be accepted.

Q. Did he sign the contract? A. Yes, sir, he signed the contract and gave me a check for a $100.00 made out to the Phillips Petroleum Company which I sent through our Borger

office to Bartlesville.

Q. Did you have any further conversations with Mr. Buster? A. Yes, sir. A letter written May 18 accompanied the contract back along with the check and in this letter it stated that the company was not accepting anymore contracts for irrigation. I took this to Mr. Buster's home. He wasn't there at the time and I talked to Mrs. Buster and as I remember, I gave Mr. Buster the check and found Mr. Buster and talked to him later in the day. At that time he asked me what could be done. I told him as far as I knew I couldn't do anything; that that letter showed me that I had no authorization to go any further with the matter but I understood that Mr. Tom Craig in Amarillo was handling all the information on irrigation gas and suggested that he talk with Mr. Tom Craig.

Q. And that ended that conversation?

A. Yes, sir.

336] Q. Did you ever at any time tell the Busters they could have the use of gas for irrigation purposes without signing a written contract on the approval and the signing of the contract by the company officials in Bartlesville?

A. No, sir.

Q. Did you tell them a contract signed by the company in Bartlesville would be necessary?

A. Yes, sir.

Q. In any of your conversations with Mr. Lee, Mr. George Hitch or the Busters, did you ever discuss with them or did they ever discuss with you the matter of the time over which the gas was to be used, the volume of gas to be used, the price to be paid for the gas used?

A. Did I duscuss the price?

Q. Yes. A. No, sir, or volume. I did discuss the volume with Mr. Buster when he asked me to check on that for him.

Q. That is by pointing to the contract provision?

A. Right.

Q. And by checking with Bartlesville as to whether it could be changed? A. That is right.

Q. Did either Mr. Lee, Mr. Hitch or the Busters make
337] any commitments to you as to the volume that they would agree to take? A. No, sir.

Q. Or the period of time over which they would agree to use the gas? A. They did not.

Q. And you do not recall the conversation in December

of 1952 about which they testified? A. I do not.

Q. Did you ever have any conversation with Mr. Henry C. Hitch or George Hitch, Jr. in respect to the use by them of gas for irrigation purposes on either the Knott or Place leases? A. I had no conversation with them. I might relate I did go by their office and at the same time that I was talking to Mr. Buster, and told them that any well they were taking gas from we would like to send in a contract signed by them and see what happened to it.

Q. When did you first learn gas was being used for irrigation purposes on the Knott lease and Place lease?

A. I learned that, we were running a survey to see
338] what connections we had on our system and it was reported to me probably in March of 1953.

Q. Was it the result of that information you went to Mr. Hitch's office and talked to them about a contract?

A. That is right.

Q. Do you know whether or not your field men knew or did not know before that time of the connections?

A. I don't know whether they knew or not.

Q. Was it reported to you? A. No, sir.

Q. And did you know about it until that survey was made? A. I did not.

Q. The field men who might be on and off those leases, what would be their position with the company?

A. I think the ones that would be there more than anyone else would be the line walkers, and the next would be the metermen which deal with the measurement of gas.

Q. Line walkers and metermen. Are they employees who should be in position to know whether or not the use of gas for irrigation purposes was or was not principally on any particular tract of land? A. No, sir.

Q. Would it come within your duties in any respect?
339] A. No, sir.

Q. (By the Court) Would they know whether or not gas was being used? A. In all probability they would, yes, sir. It depends on where the connection is made.

Q. And could they make a connection without it being known to some of your employees?

A. It is possible.

Q. (By Mr. Williams) Do you know where the connections on the Knott and Place leases were made?

A. Certainly I knew where they were made. I did not know the exact points.

Q. Is that information you knew before or after the survey? A. After the survey.

Q. Where is that connection supposed to be made?

A. Off the fuel line.

Q. Not off the company's line or equipment at all?

A. That is right.

Q. Have you ever authorized your line walkers or field
340] men to actually connect any of these lines for irrigation fuel? A. No, sir.

Q. You did install or authorize the installing of the valve nipple on the Timmons well? A. I did.

Q. You authorized the installation of the nipple and valve on the Buster well? A. Yes, sir.

Q. Did you authorize the installation of irrigation fuel lines to those valves? A. No, sir.

Q. Do you know whether or not a line walker or other field man for the company may have been present or assisted in the connection of the fuel line at the Timmons well?

A. That I do not know.

Q. Did you authorize any such employee to make such a connection? A. I did not.

Q. If he had such authority from whom would he have gotten it? A. He would have gotten it from me.

Q. And you did not give it to him?

A. That is right.

341] Cross Examination

Q. Mr. Lewis, how long did you say you had been employed by the Phillips Petroleum Company? A. I have been employed by the Phillips Petroleum Company approximately ten and a half years.

Q. How long have you been assigned to the Hansford Plant? A. I have been in the Hansford Plant area a little over seven years.

Q. And for how long a period of that time have you been Area Superintendent? A. Approximately three and a half years.

Q. Who was your predecessor? A. George Allison.

Q. As the Area Superintendent there in that area, Mr. Lewis, I take it you are the man to see by any of the royalty owners who have field problems, is that correct?

A. We try to handle the field problems. We don't have

the responsibility of all of those. We have different departments within the area to keep the royalty owners from getting confused. We try to take care of all their complaints, and we get those to the proper authorities regardless of what department it is in.

Q. You would be the man there for them to see?

A. That is correct.

Q. And all these plaintiffs in these cases have seen and talked with you a number of times about a number of problems? A. I believe all of those people talked to me about field problems at one time or another.

Q. So far as the Phillips Petroleum Company in that area is concerned you were the company there on matters of field operation, weren't you? A. Field operation and maintenance.

Q. Now going to this conversation that you had with Mr. Hitch and Mr. Lee, I believe you said it was shortly after January 1, 1953? A. That was Mr. George Hitch?

Q. Yes. A. And Lee?

Q. And Mr. Lee. A. That was sometime the first part of 1953.

Q. They came over to your office at the plant?

A. I remember Mr. Lee and I am certain Mr. Hitch was there. The conversation was between Mr. Lee and myself.

Q. In Mr. Hitch's presence?

A. That I can't answer.

Q. You say Mr. Hitch was there. A. I did not say that.

Q. You say he wasn't there? A. I didn't say that.

Q. What do you say? A. I say I talked to Mr. Lee about the irrigation.

Q. Mr. Hitch testified, I think, he was there. Do you say he was not there? A. No, sir, I do not.

Q. You just don't remember?

Q. That is right.

Q. Whether he was there or not, Mr. Lee told you they were contemplating the drilling of an irrigation well?

A. That is right.

Q. And he gave you the land description?

A. That is right.

Q. The tract involved? A. Yes, sir.

Q. That was the Timmons tract lease?

344] A. Yes, sir, that is right.

Q. He wanted to know if they would drill an irrigation well if gas would be available for fuel purposes?

A. That is right.

Q. I believe you said you told him it would.

A. No, sir, I told Mr. Lee I thought it would; that we had a form contract to sign; that it had to be approved by the management.

Q. Did you pull out a copy of that form contract and show him? A. No, sir, I did not because Mr. Lee said he was not interested at that particular time. He said there was some other people involved and if he was interested he would see me later.

Q. Didn't you tell him in substance, to go ahead and see whether or not he had the water and you can get the irrigation well, and if you can, when you get ready to tie on the gas will be there for you.

A. No, sir.

Q. You didn't say anything to him about going ahead and first determining whether he could find a supply of irrigation water? A. No, sir. My statement was to him that when he got ready to drill the well to let us know so we could get the contract sent in.

Q. Up until that time every man who had drilled an
345| irrigation well on a Phillips' lease had secured gas for irrigation purposes, had he not?

A. We had two wells at that particular time, as I remember, that had contracts for irrigation, yes.

Q. The Phillipi well? A. Right.

Q. And Henry C. Hitch? A. That is the Hitch-O.

Q. And there had not been any other requests made of you up to that time? A. The Hitch-O I did not handle.

Q. Did you handle the Phillipi? A. I handled the Phillipi form contract.

Q. Up until that time you had not been called upon by your company to deny any lessor the right to use natural gas for irrigation purposes? A. I had not been told by them not to because I did not have the authority to let them and I realized that.

Q. You knew what the policy of the company was then, didn't you? A. Yes, sir, I knew what the policy of the company was.

Q. And that was to let them have gas?
346| A. The policy of the company was at that time to anyone who wanted irrigation gas to give them this form contract and forward it through Borger to Bartlesville for their approval.

Q. And based upon that policy you told Mr. Lee, you

say probably he could get gas? A. Yes, that is right.

Q. Are you sure you used the word "probably"?

A. Yes, sir.

Q. You remember that very distinctly?

A. Yes, sir, I do because I have never promised anyone gas for sure because I have always realized that there was a possibility that a person might not get the gas. I didn't put myself in the position of promising them gas when it might not come true.

Q. Were you then contemplating a change of policy on the part of the Phillips Petroleum Company?

A. No, sir.

Q. You had not heard anything about that at that time? A. As far as the policy was concerned, I did not know of any policy except I was to handle the contract.

Q. After that conversation you say you never talked
347] to Mr. Lee or Mr. Hitch anymore until after the well was completed? A. That is correct.

Q. Mr. Lee never came by your office and visited with you? A. I believe Mr. Lee was by my office but I was not in. I was told he had come by there.

Q. He never talked to you personally?

A. No, sir.

Q. Are you going by your recollection or do you have a log book you are basing your recollection on?

A. I am going principally by my recollection. I do make some notes on my calendar.

Q. You referred to those notes today?

A. I referred to those notes before today.

Q. Anything that is not shown on the book you say didn't happen. Is that right? A. No, sir; that is not the case. I do remember some things that happened in the past.

Q. That were not in the book? A. Yes, sir.

Q. After the well was completed, the Hitch well was completed on the Timmons lease, you were over there from time to time while they were drilling it, weren't you?

A. No, sir, I was not over there when they were drilling
348] the well.

Q. You knew when it was completed? A. I was contacted by one of our men and he said the well was completed.

Q. Donald Tory? A. That was on a report that was sent in by the line walkers. Who it was I don't know.

Q. You had a boy working for you by the name of Donald

Tory? A. Yes, sir.

Q. That was he? A. He was a line walker.

Q. He was over there probably every day?

A. He was over there probably two or three times a week.

Q. Around where they were drilling the well?

A. Possibly.

Q. And he learned when they had the well completed?

A. At the time they completed it, I don't know.

Q. Did he call you or did one of the other men call you and tell you it was completed? A. No, sir. I was not called on that when it was completed. That was called to my attention through a survey that was made by the line walkers we asked them to make.

Q. Now did you happen to go over there and connect
349] it up? A. To my knowledge we did not connect the well.

Q. What did you do? A. We installed a nipple and valve on that run, contemplating they would want gas.

Q. Upon whose information was it you did that?

A. That was on the information he had passed in that there was a well being drilled over there.

Q. And you had that work done? A. Yes, sir.

Q. And you had the Rice Welding Company of Guymon?

A. That is correct.

Q. And the Phillips Petroleum Company paid the Rice Welding Company? A. That is correct.

Q. The arrangements were made there for the tile? Did the Phillips Petroleum Company do that?

A. The Rice Welding Company did it at our direction.

Q. Up to that time had you ever gone to Mr. Lee with a contract? A. No, sir.

Q. Or Mr. Hitch? A. No, sir.

350] Q. You said on direct examination you had never given anybody authority to tie onto the gas without a written contract? A. Our simply making a stub there doesn't constitute authority for the individual to tie on. We put those stubs on at times that are convenient to our operation. We were working according to our work order in that particular area on that date with the Rice Welding Company so as to save back tracking and doing the work at a later date, which we assumed he would get the gas.

Q. You are trying to tell the Court, they tied on there without your consent, Mr. Hitch and Lee tried on that well without your consent, are you? A. I say that Mr. Hitch or

whoever tied that well on tied it in without my knowledge that it was tied in.

Q. And without your consent? A. Yes, sir.

Q. When did you first show it was tied in?

A. I first knew it was tied in on a later survey that was made on connections.

Q. Did you then go to Mr. Lee and Mr. Hitch with a contract. A. I looked for Mr. Lee to talk about a contract at the same time that I was talking to Mr. Buster, and I did not find him. Mr. Lee, I believe he said that when we talked the first time that he was to contact me about the contract.

Q. Neither you or any of your men ever took a contract
351] to Mr. Lee or Mr. Hitch to sign up on this well?

A. No, sir.

Q. In connection with these conversations you had with Mr. and Mrs. Buster, as I understood you to tell the Court on your direct examination, you said you never had any conversation with either Bob Buster or his wife until sometime in March of 1953? A. It was approximately March, yes. I didn't say any exact date.

Q. You said you didn't remember any conversation the early part of January, 1953? A. I did.

Q. Do you tell the Court that conversation did not happen? A. As far as I know that conversation did not happen.

Q. Would you say yes or no, did or did it not happen, that conversation that Mrs. Buster testified occurred when you came to their house in the early part of January, 1953, and told Mr. Buster to go ahead and complete his well and when he got ready for the gas you would come up and tie them on.

A. It is a little misleading. I didn't tell Mr. Buster I would come up and tie him on.

Q. I am repeating their testimony, what they said you said. A. I do deny that conversation.

Q. That that conversation never occurred?

A. Yes, sir.

352] Q. Do you remember when you were by there talking to Mrs. Buster and Mrs. Buster was an expectant mother, wasn't she? A. The first time I saw Mrs. Buster she was not. She had a baby.

Q. You don't remember about telling her about taking two expectant mothers to the hospital during Thanksgiving and you had to make a rush trip? A. I told Mrs. Buster that.

Q. At that time you knew she was likewise an expectant mother, did you? A. No, I did not. The first time I saw Mrs.

Buster she had her baby.

Q. You are denying categorically that you were there
353] anytime in January of 1953? A. Yes, sir.

Q. Did you ever show Bob Buster a copy of the contract until you took it there for him to sign you say on this last trip? A. No, sir. On the last trip?

Q. Yes. A. I went to Bob Buster three times with the contract.

Q. Your records show, do they not, he was down at the plant on December 17? A. That is right.

Q. That is in your little brown book?

A. That is in the little brown book.

Q. You are willing to testify that is true?

A. My office force told me he was there.

Q. You put it in your book?

A. Yes, sir.

Q. That was December 17? A. Yes, sir.

Q. And he told them that he wanted to see you, that he came down to see you? A. Yes, sir.

Q. You say you never made any effort to look him up
354] until March, 1953? A. He was going to call me back.

Q. You never made any response to his visit and request that he wanted to see you? A. No, sir.

Q. Did you tell Mr. Lee and Mr. Hitch when they came over there the first time you were just an errand boy?

A. I told Mr. Lee and Mr. Hitch --

Q. Answer the question. Did you tell them you were just an errand boy? A. I didn't use those terms, no, sir.

Q. You didn't show them any copy of the contract?

A. To my knowledge, I didn't.

Q. You didn't tell them that the contract, the ones that were out or some of them that had been signed, had a one year termination clause in it?

A. We didn't discuss the provisions of the contract because he said he was not interested at that particular time.

Q. But you did tell them when the well was completed the gas would be there for them to use?

A. No, sir.

Q. Would probably be available? A. I did.

Q. You are sure you used the word "probably"?
355] A. Yes, sir.

Q. That is all.

(Witness excused)

Mr. Williams: The defendant rests.

MAYOE BUSTER, recalled by the plaintiff in rebuttal, testified as follows:

Direct Examination

Q. (By Mr. Sweet) Mrs. Buster, do you recall on the first trip Mr. Lewis made to your house, I believe you said the early part of January, 1953. A. The latter part of December or the first part of January.

Q. Were you then an expectant mother?

A. I was.

Q. When was your baby born? A. Jimmy was born on January 20.

Q. And did you and Mr. Dale Lewis have a conversation about his trip to Guymon with two expectant mothers?

A. Bob was sitting there, my husband, and Dale and myself, and we were talking about the fact that we have two boys, and I was expecting my third child, and we were hoping for a girl, and telling him we wanted a girl, and he said that brings to mind, we certainly had excitement at the plant two or three weeks ago. I believe he said two or three weeks. It was not long before that and he said these ladies were expecting the day after Thanksgiving and there was a snowstorm and he said I brought them into the hospital from the plant in a jeep, and he said it was quite an exciting time because we didn't want them at the plant when they were expectant mothers and expecting anytime, and at that time when I was talking in the hallway with him, he said, "I don't remember you before March". I naturally lost quite a lot of weight. Perhaps he doesn't remember me but why would we be talking about the fact we were going to have a child in March when Jimmy was born January 20.

(Witness excused.)

Mr. Sweet: The plaintiff rests.

(Hereupon, the trial in the above cause was concluded.)

Filed Dec. 7, 1954.

Plff. Ex. 1

YEARLY FUEL COSTS

Well	No. Motors	H.P. Each	Yearly Cost @ 9.8262¢ Gas	Yearly Cost Using SWPS Gas	Yearly Cost Using West Texas Gas Co. Gas	Yearly Cost Using Propane and Butane	Yearly Cost Using Gasoline	Yearly Cost Using Diesel Fuel	Yearly Cost Using Electricity @ 1¢ per KW Hr.
Timmons	1	110	$390	$845	$1,085	$3,920	$6,535	$2,940	$2,680
			(Cost of Diesel Replacement - $5,000) (Cost of Electric Replacement - $1,500)						
Layoe	1	120	$425	$905	$1,165	$4,275	$7,125	$3,205	$2,680
			(Cost of Diesel Replacement - $5,000) (Cost of Electric Replacement - $1,500)						
Knott	1	85	$300	$690	$ 885	$3,030	$5,050	$2,270	$2,010
			(Cost of Diesel Replacement - $3,000) (Cost of Electric Replacement - $1,200)						
Place	2	85	$600	$1,380	$1,770	$6,060	$10,100	$4,540	$4,020
			(Cost of Diesel Replacements - $6,000) (Cost of Electric Replacements- $2,400)						
Cairo*	1	100	$355	$785	$1,005	$3,565	$5,940	$2,670	$2,680
			(Cost of Diesel Replacement - $5,000) (Cost of Electric Replacement - $1,500)						

*No H.P. rating on motor.
Estimated to be 100 H.P.

D.E. Exh. not

16.9

Pg 2

Petf. E. 2

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GAS WELL PRORATION RECORD

Section 34 Twp. Blk 1N Rge. Survey 16E County Texas Lease & No. Timmons #1

First Gas 9-2-48 PPCo. Meter No. Purchaser (1) (2)

Year 1953

Date Deliverability Potential MCF/DC Psia. S. I. P. Std. D. P.

Retest Deliverability Potential MCF/DC Psia. S. I. P. Std. D. P.

Prorated Acreage (1) (2) Allowable Factor Basis Allowable Factor (1) (2)

MONTH	CURRENT ALLOWABLE	NET ALLOWABLE	ACTUAL PRODUCTION	MONTHLY STATUS OVER	MONTHLY STATUS UNDER	CUMULATIVE MONTHLY STATUS OVER	CUMULATIVE MONTHLY STATUS UNDER	COND. PROD. / BBLS.
Jan	9 527	11 444	11 034				410	
Feb	10 043	10 453	10 775			322		
Mar	9 534	9 212	11 277			2 065		
Apr	8 568	6 503	10 061			3 558		
May	7 534	3 976	9 679			5 703		
June	6 604	901	2 086			1 185		
Sub Total	51 810		54 912					
July	6 878	5 693	5 488				205	
Aug	6 929	7 134	9 069			1 935		
Sep	5 845	4 910	2 646				2 264	
Oct	8 016	10 280	5 934				4 346	
Nov	7 899	12 245	7 231				5 014	
Dec	8 697	13 711	6 965				6 746	
Total	97 074		92 245					

Year 1954

Date ..... Deliverability Potential ..... MCF/DC ..... Psia. S. I. P. ..... Std. D. P. .....

Retest ..... Deliverability Potential ..... MCF/DC ..... Psia. S. I. P. ..... Std. D. P. .....

Prorated Acreage (1) ..... (2) ..... Allowable Factor Basis ..... Allowable Factor (1) ..... (2) .....

MONTH	CURRENT ALLOWABLE	NET ALLOWABLE	ACTUAL PRODUCTION	MONTHLY STATUS OVER	MONTHLY STATUS UNDER	CUMULATIVE MONTHLY STATUS OVER	CUMULATIVE MONTHLY STATUS UNDER	COND. PROD. / BBLS.
Jan	8 815	15 561	9 545				6 016	
Feb	8 546	14 562	10 636				3 926	
Mar	8 517	12 443	10 610				1 833	
Apr	7 845	9 678	9 363				315	
May	7 085	7 400	2 170				5 230	
June	7 532	12 762	6 033				6 729	
Sub Total	48 340		48 357					
July	6 838	13 567	7 657				5 910	
Aug	7 725	13 635						
Sep								
Oct								
Nov								
Dec								
Total								

Form 5029 12-52 A 38408

STANDARD B&P

Rf 3

Gltf Ex 3

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GAS WELL PRORATION RECORD

Section 6 Twp. Blk 1N Rge. Survey 16E County Texas Lease & No. Place #1

First Gas 7-27-47 PPCo. Meter No. Purchaser (1) (2)

Year 1953

Date Deliverability Potential MCF/DC Psia. S. I. P. Std. D. P.

Retest Deliverability Potential MCF/DC Psia. S. I. P. Std. D. P.

Prorated Acreage (1) (2) Allowable Factor Basis Allowable Factor (1) (2)

MONTH	CURRENT ALLOWABLE	NET ALLOWABLE	ACTUAL PRODUCTION	MONTHLY STATUS OVER	MONTHLY STATUS UNDER	CUMULATIVE MONTHLY STATUS OVER	CUMULATIVE MONTHLY STATUS UNDER	COND. PROD. / BBLS.
Jan	5 174	6 281	5 205				1 076	
Feb	5 455	6 531	6 586			55		
Mar	5 178	5 123	5 455			332		
Apr	4 654	4 322	4 474			152		
May	4 092	3 940	5 187			1 247		
June	3 587	2 340	4 864			2 524		
Sub Total	28 140		31 771					
July	3 736	1 212	3 442			2 230		
Aug	3 764	1 534	1 835			301		
Sep	3 718	3 417	2 320				1 097	
Oct	3 616	4 713	4 234				479	
Nov	3 564	4 043	3 897				146	
Dec	3 924	4 070	4 364			294		
Total	50 462		51 863					

Year 1954

B&P "NOTICE"

Aug	3 764	1 534	1 835					
Sep	3 718	3 417	2 320			301		
Oct	3 616	4 713	4 234				1 097	
Nov	3 564	4 043	3 897				479	
Dec	3 924	4 070	4 364				146	
Total	50 462		51 863			294		

Year 1954

Date Deliverability Potential MCF/DC Psia. S. I. P. Std. D. P.

Retest Deliverability Potential MCF/DC Psia. S. I. P. Std. D. P.

Prorated Acreage (1) (2) Allowable Factor Basis Allowable Factor (1) (2)

MONTH	CURRENT ALLOWABLE	NET ALLOWABLE	ACTUAL PRODUCTION	MONTHLY STATUS OVER	MONTHLY STATUS UNDER	CUMULATIVE MONTHLY STATUS OVER	CUMULATIVE MONTHLY STATUS UNDER	COND. PROD. / BBLS.
Jan	3 977	3 683	4 297			614		
Feb	3 856	3 242	4 067			825		
Mar	3 842	3 017	4 014			997		
Apr	3 539	2 542	3 172			630		
May	3 196	2 566	4 137			1 571		
June	3 398	1 827	1 936			109		
Sub Total	21 808		21 623					
July	3 085	2 976	2 031				945	
Aug	3 485	4 430						
Sep								
Oct								
Nov								
Dec								
Total								

Form 5029 12-52 A 38408

STANDARD B&P "Nor..."

Pgf Ex 4 Pltf. Ex. 4

GAS WELL PRORATION RECORD

[p-174 - Blank] 175

Section 28 Blk. Twp. 2N Survey Rge. 15E County Texas Lease & No. Mayo #1

First Gas 11-24-46 Meter No. PPCo. Purchaser (1) (2)

Year 1953

Date Deliverability Potential MCF/DC Psia. S.I.P. Std. D.P.

Retest Deliverability Potential MCF/DC P. S.I.P. Std. D.P.

Prorated Acreage (1) (2) Allowable Factor Basis Allowable Factor (1) (2)

MONTH	CURRENT ALLOWABLE	NET ALLOWABLE	ACTUAL PRODUCTION	MONTHLY STATUS OVER	MONTHLY STATUS UNDER	CUMULATIVE MONTHLY STATUS OVER	CUMULATIVE MONTHLY STATUS UNDER	COND. PROD. / BBLS.
Jan	10 661	9 085	8 773				312	
Feb	11 238	11 550	6 800				4 750	
Mar	10 669	15 419	14 116				1 303	
Apr	9 588	10 891	11 180			289		
May	8 431	8 142	8 411			269		
June	7 390	7 121	11 355			4 234		
Sub Total	57 977		60 635					
July	7 697	3 463	6 858			3 395		
Aug	7 754	4 359	4 357				2	
Sep	7 660	7 662	6 897				765	
Oct	8 962	9 727	10 148			421		
Nov	8 832	8 411	6 827				1 584	
Dec	9 724	11 308	10 295				1 013	
Total	108 606		106 017					

Year 1954

Aug.	7 754	4 359	4 357				2	
Sep	7 660	7 662	6 897				765	
Oct	8 962	9 727	10 148			421		
Nov	8 932	8 411	6 827				1 584	
Dec	9 724	11 308	10 295				1 013	
Total	108 606		106 017					

Year 1954

Date ..... Deliverability Potential ..... MCF/DC ..... Psia. S. I. P. ..... Std. D. P. .....

Retest ..... Deliverability Potential ..... MCF/DC ..... Psia. S. I. P. ..... Std. D. P. .....

Prorated Acreage (1) ..... (2) ..... Allowable Factor Basis ..... Allowable Factor (1) ..... (2) .....

MONTH	CURRENT ALLOWABLE	NET ALLOWABLE	ACTUAL PRODUCTION	MONTHLY STATUS OVER	MONTHLY STATUS UNDER	CUMULATIVE MONTHLY STATUS OVER	CUMULATIVE MONTHLY STATUS UNDER	COND. PROD. / BBLS.
Jan	9 856	10 869	11 827			958		
Feb	9 556	8 598	9 294			696		
Mar	9 523	8 827	10 628			1 801		
Apr	8 772	6 971	8 037			1 066		
May	7 921	6 855	8 689			1 834		
June	8 422	6 588	5 873				715	
Sub Total	54 050		54 348					
July	7 645	8 360	5 388				2 972	
Aug.	8 638	11 610						
Sep								
Oct								
Nov								
Dec								
Total								

ff Ex 5. Plff. Ex 5. 177

GAS WELL PRORATION RECORD

Section 20 Twp. Blk. 2N Rge. Survey 15E County Texas Lease & No. Knott #1

First Gas 11-24-46 PPCo. Meter No. Purchaser (1) (2)

Year 1953

Date Deliverability Potential MCF/DC Psia. S. I. P. Std. D. P.

Retest Deliverability Potential MCF/DC Psia. S. I. P. Std. D. P.

Prorated Acreage (1) (2) Allowable Factor Basis Allowable Factor (1) (2)

MONTH	CURRENT ALLOWABLE	NET ALLOWABLE	ACTUAL PRODUCTION	MONTHLY STATUS OVER	MONTHLY STATUS UNDER	CUMULATIVE MONTHLY STATUS OVER	CUMULATIVE MONTHLY STATUS UNDER	COND. PROD./ BBLS.
Jan	10 221	11 997	12 826			829		
Feb	10 775	9 946	6 686				3 260	
Mar	10 229	13 489	13 212				277	
Apr	9 193	9 470	6 583				2 887	
May	8 083	10 970	5 111				5 859	
June	7 085	12 944	10 939				2 005	
Sub Total	55 586		55 357					
July	7 380	9 385	11 651			2 266		
Aug	7 434	5 168	9 868			4 700		
Sep	7 344	2 644	6 571			3 927		
Oct	8 991	5 064	7 006			1 942		
Nov	8 860	6 918	6 844				74	
Dec	9 755	9 829	9 179				650	
Total	105 350		106 476					

Year 1954

Sep	7 344	2 644	6 571			3 927		
Oct	8 991	5 064	7 006			1 942		
Nov	8 860	6 918	6 844				74	
Dec	9 755	9 829	9 179				650	
Total	105 350		106 476					

Year 1954

Date ..... Deliverability Potential ..... MCF/DC ..... Psia. S. I. P. ..... Std. D. P. .....

Retest ..... Deliverability Potential ..... MCF/DC ..... Psia. S. I. P. ..... Std. D. P. .....

Prorated Acreage (1) ..... (2) ..... Allowable Factor Basis ..... Allowable Factor (1) ..... (2) .....

MONTH	CURRENT ALLOWABLE	NET ALLOWABLE	ACTUAL PRODUCTION	MONTHLY STATUS OVER	MONTHLY STATUS UNDER	CUMULATIVE MONTHLY STATUS OVER	CUMULATIVE MONTHLY STATUS UNDER	COND. PROD. / BBLS.
Jan	9 887	10 537	11 351			814		
Feb	9 586	8 772	10 254			1 482		
Mar	9 553	8 071	10 098			2 027		
Apr	8 800	6 773	7 200			427		
May	7 947	7 520	8 997			1 477		
June	8 449	6 972	7 627			655		
Sub Total	54 222		55 527					
July	7 669	7 014	4 362				2 652	
Aug	8 665	11 317						
Sep								
Oct								
Nov								
Dec								
Total								

Phillips Petroleum Co. vs. Buster et al.

3649

Defendants' Exhibit A.

Not accepted by Co.*

Agreement

This agreement, made and entered into this 12th day of May, 1953 between Phillips Petroleum Company, herein called "Seller", and R. W. Buster, Guymon, Oklahoma and Mayoe Porter Buster, Guymon, Oklahoma herein called "Buyer", Witnesseth, that

Whereas, Buyer is owner of a royalty interest under a certain oil and gas lease or leases covering lands, part or all of which are hereinafter described, and desires to purchase from Seller natural gas produced from said lands for use solely as fuel in operating internal combustion gas engines for the pumping of water to be used for irrigation purposes; and

Whereas, Buyer has been informed by Seller, and understands, that the gas he proposes to so purchase and use will be as produced from the well in its natural state and at its natural pressure and will not have been processed or otherwise prepared for the use Buyer intends to make of it and understands, further, that Buyer's use of such gas for such purposes is hazardous and requires the exercise on Buyer's part of great care and caution; ar

Whereas, Seller is the lessee under the oil and gas lease or leases hereinbefore referred to, and is willing to sell Buyer natural gas produced from the lands covered thereby on the terms and conditions hereinafter prescribed and subject to the understandings and covenants herein expressed:

Now, Therefore, in consideration of the mutual covenants herein contained it is hereby agreed between the parties as follows:

1. Sale and Purchase - Buyer agrees to purchase and Seller agrees to sell natural gas produced from the well of Seller known as the Mayoe #1 well and located in Sec. 28, T2N-R15E, Texas County, Oklahoma, for use, and not for resale, solely as fuel in operating 602 Continental 120 HP Engine internal combustion gas engines for the pumping of water to be used for irrigating that land of Buyer described as:

* Handwritten notation at head of exhibit.

2. Quality - The gas shall be sold and delivered hereunder in its natural state and at its natural pressure without having been processed or otherwise prepared for use as fuel in internal combustion engines.

3. Quantity - The quantity of gas to be sold and purchased hereunder shall be that required by Buyer in operating the above described engines for the purpose described; provided, however, that the quantity purchasable by Buyer each calendar month shall never exceed one per cent (1%) of the volume of gas produced during the preceding month from the aforesaid well. The failure of Seller to limit Buyer's takes to such quantities during any month shall not operate as a waiver of Seller's right to thereafter so limit such takes.

4. Measurement - The gas delivered hereunder shall be measured at the point of delivery by a meter of standard make to be furnished, installed and kept in repair by Seller. The amount of gas so metered shall be computed to a pressure base of fourteen and sixty-five hundredths (14.65) pounds per square inch absolute and a base temperature of sixty degrees (60°) Fahrenheit. Said meter shall be open to inspection by Buyer in the presence of Seller. In case any question arises as to the accuracy of the meter measurement, said meter shall be tested upon the demand of either party. A registration within three per cent (3%) of correct shall be considered correct.

5. Price - For gas delivered hereunder during any calendar month Buyer shall pay Seller the weighted average price per thousand cubic feet during the month preceding that for which settlement is made. The phrase "weighted average price per thousand cubic feet" shall mean the weighted average price, computed as hereinafter provided, received by Seller and its subsidiaries from the sale to others than its subsidiaries of natural gas and any components of natural gas, excluding sales of casinghead gas sold in its natural state, delivered by Seller in the form of gas within an area comprising Texas County, Oklahoma and Sherman and Hansford Counties, Texas. In computing said weighted average price, there shall not be deducted any cost of transportation
365] or purification incurred by Seller, and any amount per thousand cubic feet received by Seller from the purchaser for transportation or purification prior to delivery shall

be deemed to be a part of the price per thousand cubic feet received by Seller; but, from the price per thousand cubic feet received by Seller from any such sale which is made at an average pressure in excess of the average shut-in wellhead pressure of all wells within the above designated area from which sweet and sour gas are produced and/or purchased by Seller, there shall be deducted 1/8¢ per thousand cubic feet for each 25 pounds or fraction thereof that the average pressure at which such sale is made so exceeds such average shut-in wellhead pressure. The shut-in wellhead pressure shall be as determined periodically by governmental agencies having jurisdiction or, if no such determinations are made, then as determined by Seller in accordance with its practice. The term "subsidiaries" shall mean corporations of whose voting stock Seller owns more than 50 per cent. The term "weighted average price" as used herein shall refer to weight with respect to volume and price only.

Buyer shall also pay Seller a connection charge of one hundred ($100.00) dollars upon the execution of this Agreement.

6: Payment - Payment for all gas delivered each month hereunder shall be made not later than the last day of the succeeding month. Failure of Buyer to so pay for such gas shall entitled Seller to withhold the amounts due hereunder from any royalties owing Buyer by Seller.

7. Continuity of Supply - Seller's duty to supply gas hereunder is subject to all valid statutes and rules and regulations of any duly constituted federal or state regulatory body having jurisdiction and is subject to interruptions resulting from the testing, repair or reconditioning of the well from which the gas sold hereunder is produced or resulting from any other cessation of production from such well deemed by Seller to be necessary in the ordinary course of its business.

8. Delivery and Equipment - The gas shall be delivered to Buyer at a connection to be provided by Seller at or near the wellhead. Buyer agrees to maintain his pipe line and other equipment, at Buyer's sole expense and risk, in a state of good repair and Seller reserves the right to discontinue to supply gas hereunder for failure of Buyer to so maintain the same. Buyer further agrees, in the interests of safety, to install and maintain such equipment as will shut off from Buyer's gas

engines the supply of gas thereto upon any interruptions of such supply. Buyer shall make no adjustments or otherwise tamper with any of the equipment or facilities of Seller.

9. Term - Either party shall have the right to terminate this contract at the expiration of one (1) year from the date thereof or on any anniversary of said date thereafter by giving the other party thirty (30) days' notice, in writing, of its intention so to do, after which each party shall be released from all further liability hereunder.

10. Indemnity - In consideration of the covenants herein contained, Buyer agrees to indemnify Seller and hold it harmless of and from any and all loss, cost, liability or damages for or on account of any injury to the persons or property of Buyer, or to the persons or property of anyone else, due to, resulting from, or arising out of the taking, transporation and use of gas by Buyer hereunder.

11. Force Majeure - Neither party shall be liable for failure of performance due to labor controversies, fires, strikes, floods, winds, lightning, accidents, or any other circumstances beyond the control of the party failing to perform whether of a similar or dissimilar nature.

12. Assignment - This agreement shall extend to and be binding upon the parties hereto, their heirs, administrators, successors and assigns.

In witness Whereof, the parties have hereunto subscribed their names.

Attest:

_____
Assistant Secretary

Phillips Petroleum Company
By_____
Vice President
R. W. Buster Seller
Mayoe Porter Buster
Buyer

366] Defendants' Exhibit B.

Phillips Petroleum Company
M-13642

Agreement

This Agreement, made and entered into this 3rd day of June, 1950 between Phillips Petroleum Company, herein called "Seller", and H. C. Hitch, Jr. herein called "Buyer", Witnesseth, that

[The four paragraphs which follow are identical with unnumbered paragraphs 2 to 5 of defendant's Exhibit A which appear at page 179 .]

1. Sale and Purchase - Buyer agrees to purchase and Seller agrees to sell natural gas produced from the well of Seller ~~known as the Hitch~~ "O" well and located in Section 28-1N-16E, Texas County, Oklahoma, for use, and not for resale, solely as fuel in operating one (1) internal combustion gas engine for the pumping of water to be used for irrigating that land of Buyer described as: Section 28-1N-16E, Texas County, Oklahoma.

[Numbered paragraphs 2 and 3 are identical with numbered paragraphs 2 and 3 of defendant's Exhibit A which appear at page 180 .]

4. Measurement - The gas delivered hereunder shall be measured at the point of delivery by a meter of standard make to be furnished, installed and kept in repair by Seller. The amount of gas so metered shall be computed to a pressure base of sixteen and four-tenths (16.4) pounds per square inch absolute and a base temperature of sixty degrees (60^{o}) Fahrenheit. Said meter shall be open to inspection by Buyer in the presence of Seller. In case any question arises as to the accuracy of the meter measurement, said meter shall be tested upon the demand of either party. A registration within three per cent (3%) of correct shall be considered correct.

[Numbered paragraphs 5 to 12 are identical with numbered paragraphs 5 to 12 of defendant's Exhibit A which appear at page 180 to 182.]

367] In Witness Whereof, the parties have hereunto subscribed their names.

Attest:
R. E. Arnold.
Assistant Secretary

Phillips Petroleum Company
By (Signature Illegible)
Vice President.
Seller

W. C. Hitch Jr.
Buyer

368] [Acknowledged]

369] Defendants' Exhibit C.

Oil And Gas Lease G-45804
G-38442-G

This Agreement, Entered into this the 7th day of January 1943 between The Hitch Land and Cattle Company, a corporation hereinafter called lessor, and Peerless Oil And Gas Company hereinafter called lessee, does witness:

1. That lessor, for and in consideration of the sum of One and no/100 Dollars ($1.00), in hand paid, and of the covenants and agreements hereinafter contained to be performed by the lessee, has this day granted and leased and hereby grants, leases and lets unto the lessee for the purpose of mining and operating for and producing oil and gas, casinghead gas and casinghead gasoline, laying pipe lines, building tanks, storing oil, building powers, stations, telephone lines and other structures thereon to produce, save, take care of and manufacture all of such substances, and for housing and boarding employees, the following described tract of land in Texas County, Oklahoma to-wit: The Southeast quarter (SE 1/4) of Section thirty-four (34), and the southwest quarter (SW 1/4) of Section thirty-five (35) except Hitchland townshight containing 35.5 acres, all in Township 1 N., Range 16 ECM, and containing 284 acres, more or less.

2. This lease shall remain in force for a term of ten (10) years and so long thereafter as oil, gas, casinghead gas, casinghead gasoline or any of them is produced.

3. The lessee shall deliver to the credit of the lessor as royalty, free of cost, in the pipe line to which lessee may

connect its wells the equal one-eighth part of all oil produced and saved from the leased premises, or at the lessee's option, may pay to the lessor for such one-eighth royalty the market price for oil of like grade and gravity prevailing on the day such oil is run into the pipe line, or into storage tanks.

4. The lessee shall pay lessor, as royalty, one-eighth of the proceeds from the sale of the gas, as such, for gas from wells where gas only is found, and where not sold shall pay Fifty ($50.00) Dollars per annum as royalty from each such well, and while such royalty is so paid such well shall be held to be a producing well under paragraph numbered two hereof. The lessor to have gas free of charge from any gas well on the leased premises for stoves and inside lights in the principal dwelling house on said land by making his own connections with the well, the use of said gas to be at the lessor's sole risk and expense. The lessee shall pay to lessor for gas produced from any oil well and used by the lessee for the manufacture of gasoline or any other product, as royalty, one-eighth of the market value of such gas. If said gas is sold by the lessee, then as royalty one-eighth of the proceeds of the sale thereof.

5. If operations for the drilling of a well for oil or gas are not commenced on said land on or before one year from this date, this lease shall terminate as to both parties, unless the lessee shall, on or before one year from this date, pay or tender to the lessor or for the lessor's credit in the City National Bank at Guymon, Oklahoma, or its successors, which bank and its successors are the lessor's agent and shall continue as the depository of any and all sums payable under this lease, regardless of changes of ownership in said land or in the oil and gas, or in the rentals to accrue thereunder, the sum of One hundred forty-two and no/100 Dollars ($142.00) which shall operate as rental and cover the privilege of deferring the commencement of drilling operations for a period of one year. In like manner and upon like payments or tenders, the commencement of drilling operations may be further deferred for like periods successively. All payments or tenders may be made by check or draft of lessee or any assignee thereof, mailed or delivered on or before the rental paying date. Notwithstanding the death of the lessor, or his successor in interest, the payment or tender of rentals in the manner provided above shall be binding on the heirs, devisees, executors, and administrators of such person.

6. If at any time prior to the discovery of oil or gas on this land and during the term of this lease, the lessee shall drill a dry hole, or holes, on this land, this lease shall not terminate, provided operations for the drilling of a well shall be commenced by the next ensuing rental paying date, or provided the lessee begins or resumes the payment of rentals in the manner and amount herein above provided; and in this event the preceding paragraphs hereof governing the payment of rentals and the manner and effect thereof shall continue in force.

7. In case said lessor owns a less interest in the above described land then the entire and undivided fee simple estate therein, then the royalties and rentals herein provided for shall be paid the said lessor only in the proportion which his interest bears to the whole and undivided fee.

8. The lessee shall have the right to use free of cost, gas, oil and water found on said land for its operations thereon, except water from the wells of the lessor. When required by lessor, the lessee shall bury pipe lines below plow depth and shall pay for damage caused by its operations to growing crops on said land. No well shall be drilled nearer than 200 feet to the house or barn now on said premises without written consent of the lessor. Lessee shall have the right at any time during or after the expiration of this lease to remove all machinery, fixtures, houses, buildings and other structures placed on said premises, including the right to draw and remove all casing.

9. Lessee is expressly granted the right and privilege to consolidate into a gas leasehold estate as defined by the State Corporation Commission of Oklahoma at the time of consolidation, as the drainage area of a gas well, the gas leasehold estate or estates which lessee may now own or hereafter acquire contiguous and/or adjacent to the herein described property. Provided that in no event shall such consolidated leasehold estate exceed an area of 640 acres; and in the event lessee exercises such right and privilege the consolidated gas leasehold estate shall be deemed, treated and operated just as though the gas leasehold estates so consolidated were covered and included in this lease originally, and in such event the royalties payable hereunder shall be prorated, and paid to the respective lessors in

the proportion that such lessors acreage in the consolidated estate bears to the total acreage in such consolidated gas leasehold estate, and a producing well on any portion of the consolidated estate shall operate to continue the entire leasehold estate in the whole of the same for so long as gas is produced therefrom.

10. If the estate of either party hereto is assigned (and the privilege of assigning in whole or in part is expressly allowed), the covenants hereof shall extend to the heirs, executors, administrators, successors and assigns, but no change of ownership in the land or in the rentals or royalties shall be binding on the lessee until after notice to the lessee and it has been furnished with the written transfer or assignment or a certified copy thereof.

11. If the leased premises shall hereafter be owned in severalty or in separate tracts, the premises, nevertheless, shall be developed and operated as one lease and all royalties accruing hereunder shall be treated as an entirey and shall be divided among and paid to such separate owners in the proportion that the acreage owned by such such separate owner bears to the entire leased acreage. There shall be no obligation on the part of the lessee to offset wells on separate tracts into which the land covered by this lease may be hereafter divided by sale, devise, or otherwise, or to furnish separate measuring or receiving tanks. It is hereby agreed that, in the event this lease shall be assigned as to a part or as to parts of the above described lands, and the holder or owner of any such part or parts shall fail or make default in the payment of the proportionate part of the rent due from him or them, such default shall not operate to defeat or affect this lease in so far as it covers a part or parts of said land upon which the said lessee or any assignee hereof shall make due payment of said rentals. If at any time there be as many as four parties entitled to rentals or royalties, lessee may withhold payments thereof unless and until all parties designate, in writing, in a recordable instrument to be filed with the lessee, a common agent to receive all payments due hereunder, and to execute division and transfer orders on behalf of said parties, and their respective successors in title.

12. Lessor hereby warrants and agrees to defend the title to the land herein described and agrees that the lessee, at its

option, may pay and discharge any taxes, mortgages, or other liens existing, levied, or assessed on or against the above described lands and in event it exercises such option, it shall be subrogated to the rights of any holder or holders thereof and may reimburse itself by applying to the discharge of any such mortgage, tax or other lien, any royalty or rentals accruing hereunder.

13. Notwithstanding anything in this lease contained to the contrary, it is expressly agreed that if lessee shall commence drilling operations at any time while this lease is in force, this lease shall remain in force and its term shall continue as long as such operations are prosecuted and, if production results therefrom, then as long as production continues.

14. If within the primary term of this lease production on the leased premises shall cease from any cause, this lease shall not terminate provided operations for the drilling of a well shall be commenced before or on the next ensuing rental paying date; or, provided lessee begins or resumes the payment of rentals in the manner and amount hereinbefore provided. If, after the expiration of the primary term of this lease, production on the leased premises shall cease from any cause, this lease shall not terminate provided lessee resumes operations for drilling a well within sixty (60) days from such cessation, and this lease shall remain in force during the prosecution of such operations and, if production results therefrom, then as long as production continues.

15. Lessee may at any time surrender this lease by delivering or mailing a release thereof to the lessor, or by placing a release thereof of record in the proper county.

16. The lease and all its terms, conditions, and stipulations shall extend to and be binding on all successors of said lessor or lessee.

(Seal) In Witness Whereof, we sign the day and year first above written.

Attest:

Arthur H. Kisting
Secretary

The Hitch Land & Cattle Company
By George C. Hitch.
President

[Acknowledged]

Phillips Petroleum Co. vs. Buster et al.

State Of Oklahoma County of Texas ss.

This instrument was filed for record on the 5 day of June 1943. at 1 o'clock PM., and duly recorded in Book 217 Page 568 of the records of this office.

Bessie M. Luce
Register of Deeds.

371] Defendants' Exhibit D.

Oil And Gas Mining Lease

This Agreement made and entered into this 6th day of August, 1940, between The Hitch Land and Cattle Company, a corporation, hereinafter called Lessor (whether one or more), and Cabot Carbon Company, a Massachusetts Corporation, hereinafter called Lessee, Does Witness:

1. That Lessor, for and in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, in hand paid, and of the covenants and agreements hereinafter contained to be performed by the Lessee, has this day granted and leased and hereby grants, leases, and lets unto the Lessee for the purpose of mining and operating for and producing oil and gas, casinghead gas, and casinghead gasoline, laying pipe lines, building tanks, storing oil, building powers, stations, telephone lines, and other structures thereon to produce, save, take care of, and manufacture all of such substances, and for housing and boarding employees, the following described tract of land in Texas County, State of Oklahoma, to-wit: East One-half (E/2) of Section Thirty-two (32); North One-half of Northeast One-quarter (N 1/2 of NE 1/4) of Section Seven (7); all of Section Six (6), except the NW 1/4 of NW 1/4 thereof; all in Township One (1), Range Sixteen (16); and East One-half of Southeast One-quarter (E 1/2 of SE 1/4) of Section Thirty-one (31), Township Two (2), Range Sixteen (16), Texas County, Oklahoma; and containing 1080 acres, more or less.

372] 2. This lease shall remain in force for a term of ten (10) years and as long thereafter as oil, gas, casinghead gas, casinghead gasoline or any of them is produced.

3. The Lessee shall deliver to the credit of the Lessor as royalty, free of cost, in the pipe line to which Lessee may connect its wells, the equal one-eighth (1/8) part of all oil produced and saved from the leased premises, or, at the Lessee's option, may pay to the Lessor for such one-eighth (1/8) royalty the market price for oil of like grade and gravity prevailing on the day such oil is run into the pipe line or into storage tanks.

4. The Lessee shall pay Lessor, as royalty, one-eighth (1/8) of the market value at the well of the gas, as such, for gas sold from wells where gas only is found, and where not sold shall pay Fifty Dollars ($50.00) per annum as royalty from each such well, and while such royalty is so paid such well shall be held to be a producing well under paragraph numbered two hereof. The Lessor to have gas free of charge from any gas well on the leased premises for stoves and inside lights in the principal dwelling house on said land by making his own connections with the well, the use of said gas to be at the Lessor's sole risk and expense. The Lessee shall pay to Lessor for gas produced from any oil well and used by the Lessee for the manufacture of gasoline, or any other product, as royalty, one-eighth (1/8) of the market value of such gas. If said gas is sold by the Lessee, then as royalty one-eighth (1/8) of the proceeds of the sale thereof.

5. If operations for the drilling of a well for oil or gas are not commenced on said land on or before one year from this date, this lease shall terminate as to both parties, unless the Lessee shall, on or before one (1) year from this date, pay or tender to the Lessor or for the Lessor's credit in the City National Bank at Guymon, Oklahoma, or its successor or successors, or any bank with which it may be merged, or consolidated, or which succeeds to its business or assets, or any part thereof, by purchaser or otherwise, which bank and its successors are the Lessor's agent and shall continue as the depository of any and all sums payable under this lease, regardless of change of ownership in said land or in the oil and gas, or in the rentals to accrue thereunder, the sum of Five Hundred And Forty & No/100 Dollars ($540.00), which shall operate as rental and cover the privilege of deferring the commencement of drilling operations for a period of one
373] (1) year. In like manner and upon like payments or tenders, the commencement of drilling operations may be

further deferred for like periods successively. All payments or tenders may be made by check or draft of Lessee or any assignee thereof, mailed or delivered on or before the rental paying date. Notwithstanding the death of the Lessor, or his successor in interest, the payment or tender of rentals in the manner provided above shall be binding on the heirs, devisees, executors, and administrators of such person.

6. If at any time prior to the discovery of oil or gas on this land and during the term of this lease, the Lessee shall drill a dry hole, or holes, on this land, this lease shall not terminate, provided operations for the drilling of a well shall be commenced by the next ensuing rental paying date, or provided the Lessee begins or resumes the payment of rentals in the manner and amount hereinabove provided (and in this event the preceding paragraphs hereof governing the payment of rentals and the manner and effect thereof shall continue in force).

7. In the event said Lessor owns a less interest in the above described land than the entire and undivided fee simple estate therein, then the royalties and rentals herein provided for shall be paid the said Lessor only in the proportion which his interest bears to the whole and undivided fee.

8. The Lessee shall have the right to use, free of cost, gas, oil, and water found on said land for its operations thereon, except water from the wells of the Lessor. When required by Lessor, the Lessee shall bury pipe lines below plow depth and shall pay for damage caused by its operations to growing crops on said land. No well shall be drilled nearer than 200 feet to the house or barn now on said premises without written consent of the Lessor. Lessee shall have the right at any time during or after the expiration of this lease to remove all machinery, fixtures, houses, buildings, and other structures placed on said premises, including the right to draw and remove all casing.

374] 9. The rights of either party hereunder may be assigned in whole or in part. By an assignment in part is meant an assignment as to only part of said land, or an assignment as to only oil or only gas, or an assignment as to only one of said minerals in part of said land. The provisions hereof shall extend to the heirs, successors and assigns of the parties

hereto, but no change or division in the ownership of the land or royalties, however accomplished, shall operate to enlarge the obligations or diminish the rights and privileges of Lessee; offsetting shall never be required to protect one portion of the leased premises against drainage through a well or wells on another portion of the leased premises, nor shall separate measurement of the production of any particular well or wells on the leased premises be in any event obligatory. No change or division in the ownership of the land or royalties shall be binding on Lessee for any purpose until Lessee shall be furnished with satisfactory written evidence thereof, including the muniments of title or certified copies thereof. Should Lessee assign this lease in whole or in part, Lessor shall look solely to the assignee for the performance of its terms, or (if the assignment was in part) for the performance of its terms as to the acreage covered by the assignment, but in either case only as to the mineral specified in the assignment, if the assignment was limited to a certain mineral (either oil or gas). Drilling or production on any portion of the leased premises shall (so far as concerns the continuance of this lease) inure to the benefit of the owners of the lease upon all portions of the leased premises. Lessee may at any time, and from time to time, execute and deliver to Lessor or place of record a release covering all or any portion or portions of the leased premises as to oil and gas or as to only one of said minerals, and thereupon shall be relieved of all obligations as to the acreage surrendered, or as to that acreage as to only the particular mineral specified, as the case may be.

375] 10. If the leased premises shall now or hereafter be owned in severalty or in separate tracts, the premises, nevertheless, shall be developed and operated as one lease and all royalties accruing hereunder shall be treated as an entirety and shall be divided among and paid to such separate owners in the proportion that the acreage owned by each such separate owner bears to the entire leased acreage. It is hereby agreed that, in the event this lease shall be assigned as to a part or as to parts of the above described lands, and the holder or owner of any such part or parts shall fail or make default in the payment of the proportionate part of the rent due from him or them, such default shall not operate to defeat or affect this lease insofar as it covers a part or parts of said land upon which the said Lessee or

any assignee hereof shall make due payment of said rentals. If at any time there be as many as four parties entitled to rentals or royalties, Lessee may withhold payments thereof unless and until all parties designate, in writing, in a recordable instrument to be filed with the Lessee, a common agent to receive all payments due hereunder, and to execute division and transfer orders on behalf of said parties and their respective successors in title.

11. Lessor hereby warrants and agrees to defend the title to the land herein described and agrees that the Lessee, at its option, may pay and discharge any taxes, mortgages, or other liens existing, levied, or assessed on or against the above described lands, and, in event it exercises such option, it shall be subrogated to the rights of any holder or holders thereof and may reimburse itself by applying to the discharge of any such mortgage, tax, or other lien, any royalty or rental accruing hereunder.

12. In case of suit, adverse claim, dispute or question as to the ownership of the royalties (or some part thereof) payable under this lease, Lessee shall not be held in default in payment of such royalties (or the part thereof in doubt) until such suit, claim, dispute or question has been finally disposed of, and Lessee shall have thirty (30) days after being furnished with the original instrument or instruments disposing of such suit, claim, or dispute (or a certified copy or copies thereof), or after being furnished with proof sufficient, in Lessee's opinion, to settle such question, within which 376 to make payment. Should the right or interest of Lessee hereunder be disputed by Lessors, or any other person, the time covered by the pendency of such dispute shall not be counted against Lessee either as affecting the term of the lease or for any other purpose, and Lessee may suspend all payments without interest until there is a final adjudication or other determination of such dispute.

13. Notwithstanding anything in this lease contained to the contrary, it is expressly agreed that if Lessee shall commence drilling operations at any time while this lease is in force, this lease shall remain in force and its term shall continue so long as such operations are prosecuted, and, if production results therefrom, then as long as production continues only insofar as 640 acres for each well upon which drilling

operations have been commenced is concerned, such 640 acre tract or tracts to be designated as set forth in Paragraph 15 hereof.

14. If within the primary term of this lease production on the leased premises shall cease from any cause, this lease shall not terminate, provided operations for the drilling of a well shall be commenced before or on the next ensuing rental paying date; or, provided Lessee begins or resumes the payment of rentals in the manner and amount hereinabove provided. If, after the expiration of the primary term of this lease, production on the leased premises shall cease from any cause, this lease shall not terminate provided Lessee resumes operations for drilling a well within sixty (60) days from such cessation, and this lease shall remain in force during the prosecution of such operations, and; if production results therefrom, then as long as production continues, only insofar as 640 acres for each well upon which drilling operations have been commenced is concerned, such 640 acres tract or tracts to be designated as set forth in Paragraph 15 hereof.

377| 15. Anything herein to the contrary notwithstanding, the drilling of a well on any part of the land above described, capable of producing oil or gas in commercial quantities, shall cause this lease to remain in full force and effect for its primary term, and as long thereafter as oil or gas in commercial quantities is produced therefrom, insofar as 640 acres, to be designated by Lessee and to include the land upon which such well is situated, is concerned; and each additional well shall have the same effect as to an additional 640 acres. As to such 640 acre tract or tracts, Lessee shall be relieved from all the obligations, express or implied, created by this lease, save and except the payment of royalties hereinabove provided to be paid, and it is expressly understood that Lessee will never be obligated to pay rental on such 640 acre tract or tracts after the completion of said well or wells, nor will Lessee ever be obligated to drill any additional wells on such 640 acre tract or tracts, and the failure to pay rental as to such tract or tracts, upon which wells have been drilled and designated as aforesaid, but said lease shall terminate as to the remainder of the land not so embraced in such tract as designated for failure to pay the proportionate rental thereon as above provided, subject to the provisions of Paragraph 16 hereof.

16. The Lessee is expressly granted the right and privilege to consolidate the leasehold estate created by the execution and delivery of this lease or any part or parts thereof with the mineral leasehold estate or estates or parts thereof in adjacent lands, provided any resulting consolidated estate shall not cover and include more than 640 acres consisting of contiguous tracts or tracts that are adjoined. Any consolidation of estates herein authorized shall be consummated when the owner of the leasehold estate created hereby shall have executed and filed for record in the office of the County Clerk of the County in which same is located a statement designating and describing such properties so consolidated and declaring his intention to consolidate same, and in the event of any such consolidation, it is agreed: (a) Whether before or after the expiration of the primary term hereof, this lease shall be continued in full force and effect as to the land covered hereby and included in any
378] such consolidation of estates so long as gas is or can be produced from any well located on any part of the land included in such consolidation (whether on lands covered hereby or not) or oil is or can be produced from any well drilled on the portion of the land covered hereby and included in such consolidation. (b) During the primary term hereof the Lessee shall be privileged to pay the annual delay rentals stipulated herein ratably on any part of this leasehold included in a consolidation of estates or not so included, and thereby continue this lease in full force and effect as to the part or portions thereof upon which rentals are so paid, but this lease, insofar as it covers any tract or tracts not included in a consolidation of estates held in force by production as herein provided, shall terminate at the expiration of the primary term hereof unless oil or gas is or can be produced from a well or wells thereon. (c) The payment of royalty to Lessor herein on gas produced from a well or wells located on any part of a consolidation of estates shall be in the proportion that the acreage covered by this lease and included in the consolidation bears to the total acreage in such consolidation of estates, but notwithstanding any consolidation, there shall be no apportionment of royalty payable on oil, and the Lessor shall receive the entire royalty payable on oil from wells drilled on the lands of the Lessor and covered hereby.

17. It is agreed that this lease shall never be forfeited.

or cancelled for failure to perform in whole or in part any of its implied covenants, conditions, or stipulations until it shall have first been finally judicially determined that such failure exists, and after such final determination, Lessee is given a reasonable time therefrom to comply with any such covenants, conditions, or stipulations.

In Witness Whereof, the parties hereto have hereunto set their hands the day and year first above written.

Attest: (Signature Illegible) Secretary

The Hitch Land And Cattle Company
By George C. Hitch
President

Cabot Carbon Company
By _____
Presider'

[Acknowledged]

379] State Of Oklahoma County Of Texas SS

This Instrument Was Filed For Record On Nov 20 1940 At 4 O'Clock, P.M. And Duly Recorded In Book 219 Of ____ Of Page 4568. Anna Lee Williamson, County Clerk By Fee 3.75 Deputy.

381] Defendants' Exhibit E.

Authorized Connections For Irrigation Purposes.

Gas Contract Number	Buyer	Source of Gas	Cancelled Effective
2120	Wayne Freeman, Jr. 11/1/51	Free #8, Hansford Co., Texas	11-1-53
2139	M. H. Freeman 2/11/52	Free #1, Sherman Co., Texas	2-11-54
2140	M. H. Freeman 2/11/52	Free #6, Sherman Co., Texas	2-11-54
2162	H. C. Hitch, Jr. 6/3/50.	Hitch "O", Texas Co., Oklahoma	6-3-54
2149	E. J. Phillips 11/1/51	Liz #1, Texas Co., Oklahoma	11-1-54

Gas Contract Number	Buyer	Source of Gas	Cancelled Effective
2170	Rex Phillips 5/1/52	Phillips "A" #1, Moore Co., Texas	5-30-54
2171	Rex Phillips 5/1/52	Phillips "B" #1, Moore Co., Texas	5-30-54
73	A. L. Thoreson 10/3/52	Rainey #1, Hansford Co., Texas	10-3-53

388] Clerks' Certificate.

United States Of America, Western District of Oklahoma, SS:

I, Theodore M. Filson, Clerk of the United States District Court for the Western District of Oklahoma, do hereby certify the above and foregoing to be a full, true and complete transcript of the pleadings, record and proceedings in Case No. 6015-Civil, Mayo Porter Buster, Plaintiff, vs. The Phillips Petroleum Company, a corporation, its agents, servants acting by and under its authority and A. M. Rippel, Defendants, as full, true and complete as the said transcript purports to contain and as called for by the designations of contents of record on appeal above set forth.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at Oklahoma City, in said District, this 5th day of January, 1956.

(Seal)

Theodore M. Filson, Clerk,
By Mabel E. Borland
Deputy.

Filed United States Court of Appeals Jan. 9, 1956, Robert B. Cartwright, Clerk.

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 5310.

PHILLIPS PETROLEUM COMPANY,
a corporation, Appellant,

v.

H. C. HITCH, JR., LALA M. HITCH,
JOHN B. GRAY, and JOYCE HITCH
GRAY, Appellees.

Statement By Appellant Of Points
On Which It Intends To Rely.

* * * * *

5. The findings of fact and conclusions of law to the effect that until July 1953 it was the general custom, practice and policy of appellant and other companies having producing gas wells in the vicinity to permit the use of natural gas at reasonable prices and in such amount as is reasonably necessary for irrigation operations; that in reliance upon such custom, practice and policy appellees drilled and equipped an irrigation well on their land; that appellant had notice and knowledge that the drilling and equipping of said irrigation well was in reliance upon such custom of appellant to so furnish gas; that appellant had notice and knowledge of the connection of appellees' gas line with appellant's gas line and that from and after the completion of said irrigation well knew of and permitted appellees to use and purchase such gas to operate said well are unsupported by and in conflict with the evidence and are contrary to law.

* * * * *

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15. The findings of fact to the effect that the reasonable amount of natural gas used and purchased from the Knott well in 1953 and 1954 for the operation of appellees' irrigation well amounted to approximately 9,273 cubic feet per day; that about 1,390,950 cubic feet of gas were reasonably used and necessary for the annual irrigation operations; and that approximately 1.3 per cent of the allowable production of the well was used for irrigation are unsupported by and are contrary to the evidence.

* * * * *

[Appellant's statement of points on which it intends to rely is identical, with the exception of points 5 and 15, with the statement of points relied on filed in case No. 5309.]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

Pleas And Proceedings Before The Honorable Edgar S. Vaught, Judge Of The United States District Court For The Western District Of Oklahoma, and The Honorable W. R. Wallace, Judge of the United States District Court for the Northern, Eastern and Western Districts of Oklahoma, Presiding In The Following Entitled Cause:

H. C. HITCH, JR., and LALA M. HITCH, his wife; and JOHN B. GRAY and JOYCE HITCH GRAY , his wife, Plaintiffs,

vs.

THE PHILLIPS PETROLEUM COMPANY, a corporation, its agents, servants and all persons acting by and under its authority and A. M. RIPPEL, Defendants.

No. 6016, Civil.

[The language of the petition for removal filed September 10, 1956, is substantially identical with that of the petition for removal, filed in case No. 6015, with the exceptions of the number of the state court docket, the plaintiffs, and description of land.]

4] State Of Oklahoma County Of Texas SS In The District Court In And For Said County And State H. C. Hitch, Jr. and Lala M. Hitch, his wife; and John B. Gray and Joyce Hitch Gray, his wife, Plaintiffs -vs- The Phillips Petroleum Company, A Corporation, its agents, servants and all persons acting by and under its authority and A. M. Rippel, Defendants. Case No. 9310

Petition.

Come now the Plaintiffs, H. C. Hitch, Jr. and Lala M.

Hitch, his wife and John B. Gray and Joyce Hitch Gray, his wife, and for their cause of action against the Defendant, Phillips Petroleum Company, a Corporation, its agents, servants and all persons acting by or under its authority and A. M. Rippel, allege and state:

That all of the Plaintiffs are residents of Texas County, Oklahoma, with address at Guymon, Oklahoma.

That the Defendant, Phillips Petroleum Company, is a Corporation duly organized and existing under and by virtue of the laws of the State of Delaware and is duly domesticated and authorized to do and transact business in the State of Oklahoma; that the Defendant, A. M. Rippel, is the manager of the natural gas department of the said Defendant, Phillips Petroleum Company, a Corporation.

That the Plaintiffs, as tenants in common, are the owners of the full fee simple title in and to the East Half (E/2) of Section Twenty (20), Township Two (2) North, Range Fifteen (15) E.C.M., Texas County, Oklahoma, the said Plaintiffs owning all of the mineral rights in and under said real estate and being entitled to receive one-half of the one-eighth royalty accruing off the gas well located on said tract as owned and operated by the Defendant, Phillips Petroleum Company.

5} That the Defendant, Phillips Petroleum Company, owns oil and gas leases upon all of Section Twenty (20), Township Two (2) North, Range Fifteen (15) E.C.M. and for the past several years has had a producing gas well located upon the above described tract as owned by the Plaintiffs, such well having been drilled on the section as a consolidated area and being the only gas well which the said Phillips Petroleum Company is authorized to drill on said section, under the rules and regulations of the Corporation Commission of the State of Oklahoma.

That for several years last past it has been the general policy, practice and conduct of the Phillips Petroleum Company, in Texas County, Oklahoma, to permit its oil and gas lessors to use natural gas off and from its well for fuel in furnishing power for pumps used on irrigation wells drilled on lands covered by the oil and gas leases as held by said Defendant, Phillips Petroleum Company, such gas being paid for by the

irrigation well owners at the going field price in that area which is now approximately 9.82¢ per thousand cubic feet, that said practice and policy has been generally known to the land owners and oil and gas lessors in the area wherein the said Phillips Petroleum Company holds its oil and gas leases; and that at no time until after July 23, 1953, did the said Phillips Petroleum Company give any notice, published or private or otherwise, that it intended to discontinue such practice, policy and conduct.

That heretofore, to-wit: and during the early months of 1953, the Plaintiffs herein relying upon such general practice, policy and conduct of the said Phillips Petroleum Company drilled an irrigation well on the Southeast Quarter (SE/4) of Section Twenty (20), Township Two (2) North, Range Fifteen (15) E.C.M., at a total outlay of approximately $15,000.00; that the Plaintiffs in drilling and equipping said well and in expending such sum relied, in good faith,
upon the said well known and generally recognized prac-
6] tice, policy and conduct of the Phillips Petroleum Company and depended upon the use of natural gas from the gas well owned by said Defendant on said section for use as fuel in furnishing power for pumping and irrigation well.

That said irrigation well was completed on or about the 1st day of May, 1953, and that immediately upon the completion thereof the connection was made between the gas well on said section and the irrigation well, such connection having been made by and with the consent and acquiescence of the Defendant, Phillips Petroleum Company, and that at all times since Plaintiffs have been using natural gas from said gas well as fuel in furnishing power to operate the pump on said irrigation well.

Plaintiffs further allege that they had no intimation nor knowledge that the Defendant, Phillips Petroleum Company, intended or expected to alter its previous policy, practice and conduct until sometime shortly after July 23, 1953, at which time they received a letter from the Defendant, A. M. Rippel, manager of the natural gas department of the Phillips Petroleum Company, advising them that unless they voluntarily severed the connection between the irrigation well and the

gas well of the Defendant, both on the above described section, on or before September 1, 1953, the said Defendant, Phillips Petroleum Company, would, without further notice, disconnect the same; a copy of said letter being hereto attached, marked "Exhibit A." and by reference made a part hereof.

Plaintiffs further allege that had it not been for the general practice, policy and conduct of the Phillips Petroleum Company, then wide and generally known in the area, of permitting its oil and gas lessors to use natural gas for irrigation purposes, they would have not incurred the expense of approximately $15,000.00 in drilling and equipping said irrigation well, and the Plaintiffs specifically allege and state that in incurring such expenditure and in drilling and equipping said irrigation well they relied, in good faith, upon the said general practice, policy and conduct of the Phillips Petroleum Company, depending upon the fact that natural gas would be available from said gas well for use by the Plaintiffs in the operation of said irrigation well; that Plaintiffs herein, relying upon said general practice, policy and conduct of the Phillips Petroleum Company, were thereby led to change their position for the worse, in the event such natural gas is not available for use on said irrigation well, and the Defendants are now equitably estopped from taking the action as threatened in the letter attached hereto and marked "Exhibit A" as such threatened act, if permitted to be performed, by said Defendants, would be wholly illegal and would work great and irreparable damage to these Plaintiffs, and that the Plaintiffs have no adequate remedy at law.

7] Wherefore, Plaintiffs pray for a judgment against all of the above named Defendants perpetually enjoining and restraining them from severing the connection between their gas well located on the above described lands belonging to these Plaintiffs from the irrigation well as owned by the Plaintiffs thereon, and that said Defendants be perpetually enjoined and restrained from molesting or disturbing the present connection as now existing between said gas well and said irrigation well, and Plaintiffs pray for all other proper and equitable relief and for their costs.

Plaintiffs further allege that unless the said Defendants are forthwith and without notice enjoined and restrained from doing the said threatened unlawful act, the said Plaintiffs will

suffer irreparable damage and injury, and therefore Plaintiffs pray that a temporary restraining order against the said Defendants be granted forthwith.

H. C. Hitch, Jr. and Lala M. Hitch, his wife;
John B. Gray and Joyce Hitch Gray, his wife.
/s/ Tryon & Sweet
Their Attorneys

[Verified]

9] Exhibit A.

Phillips Petroleum Company
Bartlesville, Oklahoma
July 22, 1953

Mr. H. C. Hitch, Guymon, Oklahoma.

Dear Sir: Our attention has been called to the fact you are connected with and are taking gas from our Place Well in Section 6-1N-16E, and Knott Well in Section 20-2N-15E, both in Texas County, Oklahoma, for irrigation purposes on said lands. Such connection was without our knowledge or consent and your taking of such gas is without right.

To avoid unnecessary hardship on your part due to an immediate loss of a fuel supply, we will defer taking action until September 1, 1953, but will expect you not later than such date to voluntarily sever such connection, and failing to do so, we will, without further notice, disconnect the same. We will at that time estimate the volume of gas so taken and bill you therefor.

Yours very truly,
Phillips Petroleum Company
By A. M. Rippel

AMR:bjj

[The jurisdictional statement is identical with the jurisdictional statement in case No. 6015 except for the style and number of the case.]

[The minute order overruling plaintiff's motion to remand is identical with that set out in case No. 6015.]

23] Answer And Counterclaim Of Defendant Phillips Petroleum Company.

1. The complaint (petition filed in the District Court in and for Texas County, Oklahoma) fails to state a claim against defendant upon which relief can be granted.

2. Defendant admits that the plaintiffs are residents of Texas County, Oklahoma, and that defendant is a Delaware corporation authorized to do business in the State of Oklahoma; that defendant is engaged in the production of natural gas; and that defendant A. M. Rippel is Manager of the Natural Gas Department of defendant Phillips Petroleum Company.

3. Defendant admits that the plaintiffs are the owners of the interests in the property described in the complaint as therein alleged; that defendant is the owner of an oil and gas lease on said property and has drilled a producing gas well thereon; and that plaintiffs have drilled an irrigation well located on said property. Defendant is without knowledge or information sufficient to form a belief as to the truth of the plaintiffs' averments as to the date said irrigation well was drilled and the amounts expended by plaintiffs in drilling said well. Defendant admits that the letter, a copy of which is attached to the complaint as Exhibit A, was sent to the plaintiffs.

4. Defendant admits that the plaintiffs have been using natural gas from defendant Phillips Petroleum Company's gas well but defendant specifically denies that the connection to said well and the use of gas by the plaintiffs from said well was by and with the consent and acquiescence of the defendant, Phillips Petroleum Company or any authorized agent or employee of said defendant.

24| 5. Defendant specifically denies that it has been the general practice and policy of defendant Phillips Petroleum Company to allow and permit its oil and gas lessors or any other persons to purchase and take gas from wells of the defendant for use in irrigation wells or that plaintiffs had or have any right to rely or depend upon any such alleged general policy or practice. Defendant admits that in certain specific instances it did make and enter into contracts with particular individuals for the furnishing of gas for irrigation wells but alleges that in each such instance the right was evidenced by a written contract first entered into and signed by a Vice President of defendant providing for the terms and conditions under which such gas was to be delivered, providing for the installation of a meter for the measurement of the volumes of gas delivered, and specifically providing that such contract could be terminated by either party at the end of one year or any anniversary thereof by giving thirty days' written notice thereof to the other party. Defendant alleges that in this case the plaintiffs made and entered into no contract, written or oral, with this defendant; they installed no meter for the measurement of the gas so taken and used by them and made no provisions for the accounting or any payment therefor.

6. Defendant denies each and all other allegations not herein specifically admitted.

Counterclaim

By way of counterclaim defendant alleges that the making of the connection by plaintiffs to the well of this defendant and the taking and using of gas by plaintiffs therefrom, as herein alleged by plaintiffs, is without legal right and unlawful and that although defendant has demanded of plaintiffs that they disconnect said connection and discontinue the taking and use of such gas, as admitted by plaintiffs in their complaint, plaintiffs have failed and refused to so disconnect said connection and to cease taking and using said gas.

Wherefore, defendant Phillips Petroleum Company, having fully answered, prays that plaintiffs take nothing by reason of their complaint filed herein but that defendant on its counterclaim herein be granted an injunction against plaintiffs enjoining plaintiffs from further maintaining their said

connection to the well of this defendant and from further taking and using gas therefrom, and for such other and further relief to which the defendant may be entitled.

Harry D. Turner
R. M. Williams
Kenneth Heady
Cecil C. Hamilton
Attorneys for Defendant Phillips Petroleum Company

Filed Sept. 14, 1953.

[Plaintiff's reply and amendment to reply to answer and counterclaim are substantially identical with the reply and amendment to reply filed in case No. 6015.]

[The opinion filed is identical with the opinion in case No. 6015.]

51] Findings Of Fact And Conclusions Of Law.

The above entitled cause was tried by the Court without a jury on September 7 and 8, 1954. The cause was tried on said date in conjunction with Nos. 6015, 6017 and 6018, and the evidence was presented and considered jointly to apply to all four causes. The Court having heard and considered the evidence, and having examined briefs thereafter filed by the parties, and being fully advised in the premises, does hereby make the following findings of fact and conclusions of law.

Findings of Fact

The Court finds:

1. Plaintiffs, H. C. Hitch, Jr., and Lala M. Hitch, his wife, and John B. Gray and Joyce Hitch Gray, his wife, are all residents and citizens of Texas County, Oklahoma; and the tract of land hereinafter described, and owned by said parties, is operated as one farm unit.

2. Phillips Petroleum Company is a corporation organized and existing under the laws of the State of Delaware, and A. M. Rippel is a nominal party in this action and does not affect the jurisdiction of the Court.

52] 3. H. C. Hitch, Jr., and Lala M. Hitch, his wife, and John B. Gray and Joyce Hitch Gray, his wife, are, as tenants in common, the owners in fee simple of the East Half of Section 20, Township 2 North, Range 15 East, Cimarron Meridian, Texas County, Oklahoma, and said tract of land is operated as one unit for agricultural purposes.

4. Phillips Petroleum Company holds oil and gas leases on the above described land and has a producing gas well, known as the Knott Well, located on said land.

5. Dale Lewis has, since early 1951, been the field superintendent of Phillips Petroleum Company in Texas County, Oklahoma, and for the area including the above described land. The said Lewis was the agent and servant of Phillips Petroleum Company and was authorized to and did make arrangements for and on behalf of said company, and represented said company, in connection with arrangements with farmers, including these plaintiffs, concerning operation of gas wells and related operations of said company generally in the vicinity of Texas County, Oklahoma; and in particular, the said Lewis was authorized to and did make arrangements for and on behalf of said company, and represented said company in connection with arrangements for the sale of gas for the operation of irrigation water wells in said vicinity, including said land, to the extent and in the manner as shown in Findings No. 5 and No. 6 hereof, and in doing all other things for and on behalf of said company, which he is found herein to have done; and since early 1951, the Phillips Petroleum Company held out the said Dale Lewis to these plaintiffs and to farmers generally in the vicinity including said land in Texas County, Oklahoma, as its spokesman, agent, and servant authorized to conduct negotiations for and to represent said company in negotiations for the sale of natural gas for operation of irrigation water wells in said vicinity including said land; and the said Lewis had, and it was made to appear by defendant, Phillips Petroleum Company, to these plaintiffs and to farmers generally in the vicinity including said land, that the said Lewis had authority to do all things which he is found herein to have

done and to make all of the commitments he is found herein to have made for and on behalf of the said Phillips Petroleum Company.

53] 6. Until about July 1953, it was the general custom, practice and policy of defendant, Phillips Petroleum Company, and other companies having producing gas wells in the vicinity of said land in Texas County, Oklahoma, to permit the use of and purchase of natural gas at reasonable prices and in such amount as is reasonably necessary for such irrigation operations from gas wells on irrigated lands.

7. In reliance upon said custom, practice, and policy, plaintiffs drilled and equipped one irrigation water well on said land at a cost of approximately $14,000.00 to $15,000.00, and made further expenditures for equipment for such irrigation of about $10,000.00 to $12,000.00, with considerable further expense in preparation of said land for irrigation, thereby making a total investment of about $25,000.00 for such irrigation purposes; and said water well was drilled and completed in the spring of 1953, and the said Phillips Petroleum Company did, from and after said date of completion of said well, permit plaintiffs to use and purchase natural gas from the gas well on said land reasonably necessary to operate such irrigation water well.

8. Said irrigation water well was completed at substantial depth, and has since its completion irrigated said land for the remainder of 1953, and in 1954, until the time of trial.

54] 9. Phillips Petroleum Company, by and through its agents, servants and employees performing duties on said land in the vicinity of said irrigation water well, had knowledge and notice of plaintiffs' expenditures in drilling and equipping said irrigation water well and preparation of said land for irrigation, and that all of such expenditures and preparations were in reliance upon the custom, practice and policy of defendant, Phillips Petroleum Company, concerning the providing of natural gas produced by the said company from said land reasonably necessary for the operation of the said water well. Said defendant, by and through its agents, servants, and employees, had knowledge and notice of the connection of said company's gas line with plaintiffs' line for receipt of gas

for the operation of said well, which connection was made about the time of completion of said well; and said defendant since said connection has had knowledge and notice of such use of gas for such irrigation purpose at said irrigation water well.

10. Severe drought conditions affecting the vicinity, including said land in recent years have made irrigation necessary and proper for continued agricultural use of said land with reasonable assurance of profit.

11. The use of other fuels to lift water for irrigation from said well, completed at substantial depth to obtain a reasonably adequate supply of water, would cost annually about $690.00 or $885.00 for utility company gas; $3,030.00 for propane or butane; $5,050.00 for gasoline; $2,270.00 for diesel fuel; and $2,010.00 for electricity, all as against about $300.00 for natural gas at the wellhead price, 9.8262¢ per mcf; and equipment for use of diesel fuel or electricity would further cost about $3,000.00 or $1,200.00, respectively. Such natural gas produced on said land, at a reasonable price, is the only fuel whose use will permit necessary irrigation for agricultural use of said land with reasonable assurance of profit.

55] 12. Attempted recovery of compensation by these plaintiffs for damage caused by the threatened disconnection of gas by defendant, Phillips Petroleum Company, and refusal and failure of said defendant to permit the use and purchase of natural gas for such irrigation by plaintiffs, by actions at law, will and would require continuing and numerous suits between the parties, producing a multiplicity of actions.

13. The reasonable amount of natural gas used and purchased from the Knott Well on said land in 1953 and 1954, for the operation of the orrigation water well on said land amounted to approximately 9,273 cubic feet of gas per day, and said water well is used approximately 150 days per year, or about 1,390,950 cubic feet of gas was reasonably used and necessary for annual irrigation operations. The natural gas produced from the Knott Well in 1953 amounted to approximately 106,476,00 cubic feet, and the allowable production of natural gas from said well during said year was approximately 105,000,000 cubic feet, so that approximately 1.3% of the said gas was

used for irrigation. The pipe line purchaser of gas from defendant has expressed its consent and approval of such use of gas for irrigation purposes.

14. Defendant, Phillips Petroleum Company, on about July 23, 1953, warned and advised plaintiffs that unless the connection between the irrigation water well on said land and said defendant's gas line from the Knott Well on said land was severed by plaintiffs before September 1, 1953, said defendant would disconnect the same. Said defendant, Phillips Petroleum Company, from July 23, 1953, or thereabout, has threatened and continues to threaten that it will refuse to permit the use and purchase of any natural gas for irrigation purposes by plaintiffs on said land from the gas produced by the Knott Well on said land, and said defendant, from said date, has refused and continues to refuse to undertake any negotiations concerning such use and purchase of gas by plaintiffs for such purpose.

56] Conclusions of Law

The Court makes the following conclusions of law:

1. The Court has jurisdiction of the parties and the subject matter of this action.

2. The said Dale Lewis had authority from defendant, Phillips Petroleum Company, to make the representation, promise, and agreement which he is found to have made in these findings and conclusions; such authority for making such representation, promise and agreement for defendant, Phillips Petroleum Company, is reasonably implied from the authority granted to the said Dale Lewis by defendant; and his authority was, by defendant, Phillips Petroleum Company, made to appear to include authority to make such representation, promise and agreement for defendant, Phillips Petroleum Company, to plaintiffs and farmers generally in the vicinity including said land.

3. Defendant, Phillips Petroleum Company, is obligated, by reason of its conduct, representation, promise and agreement, to permit the use and purchase by plaintiffs at a reasonable price, during the continuance of irrigation operations on said land, from natural gas produced thereon by said defendant, of such amount of natural gas as is reasonably necessary for such

irrigation, and plaintiffs are obligated to make any such purchase of natural gas for such irrigation requirements from said defendant.

57] 4. Defendant, Phillips Petroleum Company, is estopped by reason of its conduct, representation, promise and agreement, and reliance by the plaintiffs thereon with said defendant's knowledge, to deny or repudiate such obligation or to refuse permission for such use and purchase of such natural gas by plaintiffs. Said defendant is further estopped to assert the statute of frauds as a defense to avoid such obligation and permission for such use and purchase of such natural gas by plaintiffs; and the repudiation of such obligation and the assertion of the statute of frauds as a defense in this action is inequitable and unjust, and should not be permitted by a court of equity.

5. Plaintiffs have no adequate remedy at law; plaintiffs would and will suffer irreparable injury from said defendant, Phillips Petroleum Company's threatened disconnection of gas to plaintiffs' irrigation water well, and defendant's threatened refusal to permit the use and purchase of such natural gas for such purpose by plaintiffs unless equitable relief is granted; attempted recovery of damages at law by these plaintiffs to compensate for injury by such threatened action by said defendant would require a multiplicity of actions, burdensome on the Court and the parties, and the Court finds equitable relief as prayed for to be just and proper, and required by equity and good conscience in the premises.

6. Defendant, Phillips Petroleum Company, its officers, agents, servants and employees, should be restrained and enjoined from disconnecting plaintiffs' gas line connecting their water well irrigating the E 1/2 of Section 20, Township 2 North, Range 16 East, Cimarron Meridian, Texas County, Oklahoma, with defendant's producing gas well known as the Knott Well located on said land; and from refusing or failing to permit the use and purchase by plaintiffs, at a

58] reasonable price during the continuance of such irrigation from gas produced on said land, of such amount of natural gas as is reasonably necessary for such irrigation on said land.

Dated this 4th day of November, 1955.

Edgar S. Vaught
United States District Judge

Filed November 4, 1955.

59] Judgment.

The above entitled cause was tried by the Court without a jury on September 7th and 8th, 1954; and the Court, having heard and considered the evidence offered and having examined briefs thereafter filed by the parties, and being fully advised in the premises, finds:

That the Court has jurisdiction of the parties and the subject matter of the action; that plaintiffs are entitled to final judgment restraining and enjoining the defendant, Phillips Petroleum Company, as prayed for by plaintiffs, by reason of the findings of fact and conclusions of law made by the Court herein on the 4 day of Nov, 1955; that plaintiffs have no adequate remedy at law; that plaintiffs would and will suffer irreparable injury from said defendant, Phillips Petroleum Company's threatened disconnection of gas to plaintiffs' irrigation water well, and said defendant's threatened refusal to permit the use and purchase of such natural gas for such purpose by plaintiffs, unless equitable relief is granted; that attempted recovery of damages at law by these plaintiffs to compensate for injury by such threatened action by said defendant would require a multiplicity of actions, burdensome on the Court and the parties; and that equitable relief as prayed for is just and proper, and required by equity and good conscience in the premises.

It Is, Therefore, Ordered, Adjudged And Decreed that defendant, Phillips Petroleum Company, its officers, agents, servants and employees, are hereby restrained and enjoined from disconnecting plaintiffs' gas line connecting their water well irrigating the East Half (E 1/2) of Section 20, Township 2 North, Range 15 East, Cimarron Meridian, Texas County, Oklahoma, with defendant's producing gas well, known as the Knott Well, located on said land; and from refusing or failing to permit the use and purchase by plaintiffs at a reasonable price, during

the continuance of such irrigation, from gas produced on said land, of such amount of natural gas as is reasonably necessary for such irrigation on said land.

Dated this 4 day of Nov., 1955.

Edgar B. Vaught
United States District Judge

Filed November 4, 1955.

61] Notice Of Appeal.

Notice is hereby given that Phillips Petroleum Company, a corporation, one of the defendants above named, hereby appeals to the United States Court of Appeals for the Tenth Circuit from the final judgment entered in this action on the 4th day of November, 1955.

Dated November 30, 1955.

Rayburn L. Foster
Harry D. Turner
R. M Williams
Kenneth Heady
Cecil C. Hamilton
Attorneys for Appellant

Filed Nov. 30, 1955.

[An appeal bond was filed November 30, 1955.]

[The designated portions of the transcript of proceedings on motion to remand, the transcript of trial proceedings and exhibits are identical with those in case No. 6015]

72] Clerk's Certificate.

United States Of America, Western District of Oklahoma.
SS:

Phillips Petroleum Co. vs. Buster et al.

I, Theodore M. Filson, Clerk of the United States District Court for the Western District of Oklahoma, do hereby certify the above and foregoing to be a full, true and complete transcript of the pleadings, record and proceedings in Case No. 6016-Civil, H. C. Hitch, Jr., and Lala M. Hitch, his wife; and John B. Gray and Joyce ~~Hitch Gray, his wife, Plaintiffs~~, vs. The Phillips Petroleum Company, a corporation, its agents, servants and all persons acting by and under its authority and A. M. Rippel, Defendants, as full, true and complete as the said transcript purports to contain and as called for by the designations of contents of record on appeal above set forth.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at Oklahoma City, in said District, this 5th day of January, 1956.

(Seal)

Theodore M. Filson, Clerk,
By Mabel E. Borland
Deputy.

Filed United States Court of Appeals Tenth Circuit, Jan. 9, 1956, Robert B. Cartwright, Clerk.

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 5311.

PHILLIPS PETROLEUM COMPANY,
a corporation, Appellant,

v.

HENRY C. HITCH and CHRISTINE
W. HITCH, Appellees.

Statement By Appellant Of Points On
Which It Intends To Rely On Appeal.

* * * * *

5. The findings of fact and conclusions of law to the effect that until July 1953 it was the general custom, practice and policy of appellant and other companies having producing gas wells in the vicinity to permit the use of natural gas at reasonable prices and in such amount as is reasonably necessary for irrigation operations; that in reliance upon such custom, practice and policy appellees drilled and equipped two irrigation wells on their land; that appellant had notice and knowledge that the drilling and equipping of said irrigation wells was in reliance upon such custom of appellant to so furnish gas; that appellant had notice and knowledge of the connection of appellees' gas line with appellant's gas line and that from and after the completion of said irrigation wells knew of and permitted appellees to use and purchase such gas to operate said wells are unsupported by and in conflict with the evidence and are contrary to law.

* * * * *

15. The findings of fact to the effect that the reasonable amount of natural gas used and purchased from the Place well in 1953 and 1954 for the operation of appellees' irrigation wells amounted to approximately 18,545 cubic feet per day; that about 2,781,750 cubic feet of gas were reasonably used and necessary for the annual irrigation operations; and that substantially less than 5.3 per cent of the allowable production of the well was used for irrigation are unsupported by and are contrary to the evidence.

* * * * * *

[Appellant's statement of points on which it intends to rely is identical, with the exception of points 5 and 15, with the statement of points relied on filed in case No. 5309.]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA.

Pleas And Proceedings Before The Honorable Edgar S. Vaught, Judge Of The United States District Court For The Western Distriet Of Oklahoma, and The Honorable W. R. Wallace, Judge of the United States District Court for the Northern, Eastern and Western Districts of Oklahoma, Presiding In The Following Entitled Cause:

HENRY C. HITCH and CHRISTINE W. HITCH, Husband and wife, Plaintiffs,

vs.

THE PHILLIPS PETROLEUM COMPANY, a corporation, its agents, servants and all persons acting by and under its authority, and A. M. RIPPEL, Defendants.

No. 6017, Civil.

[The language of the petition for removal, filed September 10, 1953, is substantially identical with that of the petition for removal, filed in case No. 6015, with the exceptions of the number of the state court docket, the plaintiffs, and description of land.]

3] In The District Court In And For Texas County, State Of Oklahoma Henry C. Hitch and Christine W. Hitch, husband and wife, Plaintiffs -vs- The Phillips Petroleum Company a Corporation, its Agents, Servants and all persons acting by and under its authority and A. M. Rippel, Defendants Case No. 9311

Petition.

Comes now the Plaintiffs, Henry C. Hitch and Christine

W. Hitch and for cause of action against the defendants, The Phillips Petroleum Company, a Corporation, its agents, servants and all persons acting by and under its authority and A. M. Rippel, allege and state:

That the plaintiffs are residents of Texas County, Oklahoma with postoffice address at Guymon, Oklahoma.

That the defendant, Phillips Petroleum Company, is a Corporation, duly organized and existing under and by virtue of the laws of the State of Delaware and is duly domesticated and authorized to do business in the State of Oklahoma and that the said defendant, Phillips Petroleum Company as Corporation is generally engaged in the production of natural gas off and from a large acreage in the Southeastern section of Texas County, Oklahoma, and that the defendant, A. M. Rippel is the Manager of the natural gas department of the said defendant, Phillips Petroleum Company, a Corporation, and resides in Washington County, Oklahoma; that the plaintiffs are the owners in fee simple in and to all of Section Six (6), Township One (1) North, Range Sixteen (16), ECM, Texas County, Oklahoma, such plaintiffs owning all of the oil, gas and other mineral rights under said lands and being entitled to receive all of the one-eighth (1/8th) royalty accruing off the gas well owned by the defendants and located on said section.

4) That the defendant, Phillips Petroleum Company, a Corporation holds oil and gas leases upon all of Section Six (6), Township One (1), North, Range Sixteen (16), E.C.M., Texas County, Oklahoma, and for the past several years has had a producing gas well located on said section, which said section has been unitized, for natural gas production purposes, such well being the only gas well the said Phillips Petroleum Company, a Corporation is authorized to drill upon said entire section, under the rules and regulations of the Corporation Commission of the State of Oklahoma.

That the plaintiffs herein have two irrigation wells located on the Northwest Quarter (NW/4) of Section Six (6), Township One (1) North, Range Sixteen (16), E.C.M., Texas County, the first well having been drilled and completed approximately two years last past, and the second having been drilled and completed about one year last past.

That since the completion and the installation of said two irrigation wells, the plaintiffs have, by and with the consent and acquiescence of the Phillips Petroleum Company, a Corporation, been using natural gas from the gas well located on said section as fuel for furnishing power for the operation of the pumps on said two irrigation wells.

That previously to the drilling of said two irrigation wells, the plaintiffs had drilled another irrigation well on land covered by oil and gas leases under which the Phillips Petroleum Company had a producing gas well and that the said Phillips Petroleum Company on such well, voluntarily gave the plaintiffs a contract under the terms of which it was agreed that plaintiffs could take gas for irrigation well purposes and pay for same at the going well head price in the Texas County area of Guymon-Hugoton Gas field, such price presently being approximately 9.82 cents per 1000 feet, which said price the plaintiffs herein are ready, willing and able to pay for the gas used and consumed in the operation of the two irrigation wells located on Section Six (6), Township One (1) North, Range Sixteen (16), E.C.M. Texas County, Oklahoma.

35] That heretofore and up until July 23, 1953, it has been the general practice and policy of the Phillips Petroleum Company, to allow and permit its oil and gas lessors, who own or hold a portion of the mineral rights under any producing gas well and who are entitled to receive all or a portion of the royalty accrued from such gas well or wells, to purchase and take gas from the wells at the going field price, and the plaintiffs, in drilling the two wells located on Section Six (6), Township One (1) North, Range Sixteen (16), E.C.M. relied and depended upon this general policy and practice of Phillips Petroleum Company; that the plaintiffs in drilling said two irrigation wells incurred expenses in the approximate sum of $30,000.00, all of which expenditure was incurred because of their reliance upon said general practice and policy of the Phillips Petroleum Company.

That upon the completion of each of said wells a connection was made between the gas well and the irrigation wells on said section by and with the consent and acquiescence of said Phillips Petroleum Company and that at all times since the completion of said two irrigation wells the plaintiffs have been utilizing the gas from said gas well as fuel for

powering and pumping on the two irrigation wells.

Plaintiffs further allege that had it not been for said general practice, policy and conduct on the part of the Phillips Petroleum Company in permitting and allowing their lessors to use natural gas for irrigation purposes and had it not been for the fact that the said Phillips Petroleum Company had previously given them a contract, on another irrigation well authorizing such use of the natural gas from the well belonging to said defendant, that said plaintiffs would not have incurred said expenditure and would not have drilled and equipped said two irrigation wells, and that relying upon the general policy, practice and conduct of the said Phillips Petroleum Company, these plaintiffs were led to change their position for the worse, in the event such natural gas is not available for use on said irrigation wells, and that the plaintiffs therefore allege that the defendants herein are now equitably estopped from severing the connection between said gas well located on the above described section and the two irrigation wells located on the Northwest Quarter of said section as owned by these plaintiffs.

6] Plaintiffs further allege that they had no intimation or no knowledge that the defendant Phillips Petroleum Company intended to change its practice, policy and conduct until shortly after July 23, 1953, at which time they received a letter from the defendant, A. M. Rippel, Manager of the Natural Gas Department of Phillips Petroleum Company, advising them that unless they voluntarily severed the connection between the irrigation well and the gas well on the above described section on or before September 1st, 1953, the said defendant, Phillips Petroleum Company would without further notice disconnect the same, a copy of said letter being hereto attached, marked Exhibit "A" and being made a part hereof.

Plaintiffs further allege that in drilling and equipping the two irrigation wells upon the above described section they acted in absolute good faith, relying upon the general practice, policy and conduct of said Phillips Petroleum Company, and that were the said Phillips Petroleum Company now to carry out its threatened action of disconnecting the gas well on said section from said two irrigation wells, these plaintiffs would suffer great and irreparable damage for which they have no adequate remedy at law.

Wherefore, Plaintiffs pray for a judgment against all of the above named defendants perpetually enjoining and restraining them from severing the connection between the gas well as owned by the defendants on Section Six (6), Township One (1) North, Range Sixteen (16), E.C.M., Texas County, Oklahoma, and the two irrigation wells as owned by the plaintiffs and located on the Northwest Quarter of said section, and that said defendants be perpetually enjoined and restrained from molesting or disturbing the present connection as now existing between said gas well and the said irrigation wells, and Plaintiffs pray for all other proper and equitable relief and for costs.

7] Plaintiffs further allege that unless the said defendants are forthwith and without notice enjoined and restrained from doing the said threatened unlawful act, the said plaintiffs will suffer irreparable damage and injury and that the plaintiffs have no adequate remedy at law and that therefore plaintiffs pray that a temporary restraining order against the said defendants be granted forthwith.

Henry C. Hitch
Christine W. Hitch
By Tryon & Sweet
Their Attorneys

[Verified.]

8] Exhibit A.

Phillips Petroleum Company
Bartlesville, Oklahoma
July 23, 1953

File: 2-Ri-192-53-NG

Registered Mail

Mr. H. C. Hitch, Guymon, Oklahoma.

Dear Sir: Our attention has been called to the fact that you are connected with and are taking gas from our Place Well in Section 6-1N-16E, and Knott Well in Section 20-2N-15E, both in Texas County, Oklahoma, for irrigation purposes on

said land. Such connection was without our knowledge or consent and your taking of such gas is without right.

To avoid unnecessary hardship on your part due to an immediate loss of a fuel supply, we will defer taking action until September 1, 1953, but will expect you not later than such date to voluntarily sever such connection, and failing to do so, we will, without further notice, disconnect the same. We will at that time estimate the volume of gas so taken and bill you therefor.

Yours very truly,
Phillips Petroleum Company
By A. M. Rippel

AMR: Bjj

[The jurisdictional statement is identical with the jurisdictional statement in case No. 6015 except for the style and number of the case.]

[The minute order overruling plaintiff's motion to remand is identical with that set out in case No. 6015.]

22] Answer and Counterclaim Of Defendant Phillips Petroleum Company.

1. The complaint (petition filed in the District Court in and for Texas County, Oklahoma) fails to state a claim against defendant upon which relief can be granted.

2. Defendant admits that the plaintiffs are residents of Texas County, Oklahoma, and that defendant is a Delaware corporation authorized to do business in the State of Oklahoma; that defendant is engaged in the production of natural gas; and that defendant A. M. Rippel is Manager of the Natural Gas Department of defendant Phillips Petroleum Company.

3. Defendant admits that the plaintiffs are the owners of the interests in the property described in the complaint as therein alleged; that defendant is the owner of an oil and

gas lease on said property and has drilled a producing gas well thereon; and that plaintiffs have drilled two irrigation wells located on said property. Defendant is without knowledge or information sufficient to form a belief as to the truth of the plaintiffs' averments as to the dates said irrigation wells were drilled and the amounts expended by plaintiffs in drilling said wells. Defendant admits that the letter, a copy of which is attached to the complaint as Exhibit "A", was sent to the plaintiffs.

4. Defendant admits that the plaintiffs have been using natural gas from defendant Phillips Petroleum Company's gas well but defendant specifically denies that the connection to said well and the use of said gas by plaintiffs from said well was by and with the consent and acquiescence of the defendant Phillips Petroleum Company or any authorized employee of said defendant.

23] 5. Defendant admits that it entered into a contract with plaintiffs for the furnishing of gas for use in an irrigation well not involved in this proceeding, said contract providing that either party should have the right to cancel said contract at the expiration of one year from June 30, 1950, or on any anniversary of said date by giving the other party thirty days' written notice, but defendant denies that the execution of said contract in any way obligates defendant to furnish plaintiffs any of the gas involved in this cause and alleges that the reference in the complaint to said contract is wholly immaterial to any issue in this case.

6. Defendant specifically denies that it has been the general practice and policy of defendant Phillips Petroleum Company to allow and permit its oil and gas lessors or any other persons to purchase and take gas from wells of the defendant for use in irrigation wells or that plaintiffs had or have any right to rely or depend upon any such alleged general policy or practice. Defendant admits that in certain specific instances it did make and enter into contracts with particular individuals for the furnishing of gas for irrigation wells but alleges that in each such instance the right was evidenced by a written contract first entered into and signed by a Vice President of defendant providing for the terms and conditions under which such gas was to be delivered, providing

for the installation of a meter for the measurement of the volumes of gas delivered, and specifically providing that such contract would be terminated by either party at the end of one year or any anniversary thereof by giving thirty days' written notice thereof to the other party. Defendant alleges that in this case the plaintiffs made and entered into no contract, written or oral, with this defendant; they installed no meter for the measurement of the gas so taken and used by them and made no provisions for the accounting or any payment therefor.

24] 7. Defendant denies each and all other allegations not herein specifically admitted.

Counterclaim

By way of counterclaim defendant alleges that the making of the connection by plaintiffs to the well of this defendant and the taking and using of gas by plaintiffs therefrom, as herein alleged by plaintiffs, is without legal right and unlawful and that although defendant has demanded of plaintiffs that they disconnect said connection and discontinue the taking and use of such gas, as admitted by plaintiffs in their complaint, plaintiffs have failed and refused to so disconnect said connection and to cease taking and using said gas.

Wherefore, defendant Phillips Petroleum Company, having fully answered, prays that plaintiffs take nothing by reason of their complaint filed herein but that defendant on its counterclaim herein be granted an injunction against plaintiffs enjoining plaintiffs from further maintaining their said connection to the well of this defendant and from further taking and using gas therefrom, and for such other and further relief to which the defendant may be entitled.

Harry D. Turner
R. M. Williams
Kenneth Heady
Cecil C. Hamilton
Attorneys for Defendant
Phillips Petroleum Company

Filed Sept. 14, 1954.

[Plaintiff's reply and amendment to reply to answer and counterclaim are substantially identical with the reply and amendment to reply filed in case No. 6015.].

[The opinion is identical with the opinion in case No. 6015.]

50] Findings Of Fact And Conclusions Of Law.

The above entitled cause was tried by the Court without a jury on September 7 and 8, 1954. The cause was tried on said dates in conjunction with Nos. 6015, 6016, and 6018, and the evidence was presented and considered jointly to apply to all four causes. The Court having heard and considered the evidence, and having examined the briefs thereafter filed by the parties, and being fully advised in the premises, does hereby make the following findings of fact and conclusions of law.

Findings of Fact

The Court finds:

1. Henry C. Hitch and Christine W. Hitch, husband and wife, are residents and citizens of Texas County, Oklahoma, and the tract of land hereinafter described is operated by them for agricultural purposes.

2. Phillips Petroleum Company is a corporation organized and existing under the laws of the State of Delaware, and A. M. Rippel is a nominal party in this action and does not affect the jurisdiction of the Court.

3. Plaintiffs, Henry C. Hitch and Christine W. Hitch, husband and wife, are owners in fee simple of all of Section Six (6), Township One (1) North, Range Sixteen (16) East, Cimarron Meridian, Texas County, Oklahoma, and said section is operated as one unit for agricultural purposes.

51] 4. Phillips Petroleum Company holds oil and gas leases on all the above described land and has a producing gas well, known as the Place Well, located on said land.

5. Dale Lewis has, since early 1951, been the field superintendent of Phillips Petroleum Company in Texas County, Oklahoma, and for the area including the above described land. The said Lewis was the agent and servant of Phillips Petroleum Company and was authorized to and did make arrangements for and on behalf of said company, and represented said company, in connection with arrangements with farmers, including these plaintiffs, concerning operation of gas wells and related operations of said company generally in the vicinity of Texas County, Oklahoma; and in particular, the said Lewis was authorized to and did make arrangements for and on behalf of said company, and represented said company in connection with arrangements for the sale of gas for the operation of irrigation water wells in said vicinity, including said land, to the extent and in the manner as shown in Findings No. 5 and No. 6 hereof, and in doing all other things for and on behalf of said company, which he is found herein to have done; and since early 1951, the Phillips Petroleum Company held out the said Dale Lewis to these plaintiffs and to farmers generally in the vicinity including said land in Texas County, Oklahoma, as its spokesman, agent, and servant authorized to conduct negotiations for and to represent said company in negotiations for the sale of natural gas for operation of irrigation water wells in said vicinity including said land; and the said Lewis had, and it was made to appear by defendant, Phillips Petroleum Company, to these plaintiffs and to farmers generally in the vicinity including said land, that the said Lewis had authority to do all things which he is found herein to have done and to make all of the commitments he is found herein to have made for and on behalf of the said Phillips Petroleum Company.

52] 6. Until about July, 1953, it was the general custom, practice and policy of defendant, Phillips Petroleum Company, and other companies having producing gas wells in the vicinity of said land in Texas County, Oklahoma, to permit the use and purchase of natural gas at reasonable prices and in such amount as is reasonably necessary for such irrigation operations from gas wells on irrigated land.

7. In reliance upon said custom, practice, and policy, plaintiffs drilled and equipped two irrigation water wells on said land at a cost of approximately $15,000.00 per well, and made further expenditures for preparation of the land for irrigation of approximately $15,000.00; and the said Phillips

Petroleum Company, did, from and after the completion of said wells respectively in about the middle of 1951 and about the Fall of 1952, permit plaintiffs to use and purchase natural gas from the gas well on said land reasonably necessary to operate such irrigation water wells.

8. Said irrigation water wells were completed at substantial depths, and have since their completion irrigated said Section Six (6) from their completion until the time of trial.

9. Phillips Petroleum Company, by and through its agents, servants and employees performing duties on said land in the vicinity of said irrigation water wells, had knowledge and notice of plaintiffs' expenditures in drilling and equipping said irrigation water wells and preparation of said land for irrigation, and that all of such expenditures and preparations were in reliance upon the custom, practice and policy of defendant, Phillips Petroleum Company, concerning the providing of natural gas produced by the said company from said land reasonably necessary for the operation of the said water wells. Said defendant by and through its agents, servants, and employees had knowledge and notice of the connection of said company's gas line with plaintiffs' line for receipt of gas for operation of said wells, which connections were made about the time of completion of said wells; and said defendant since said connections has had knowledge and notice of such use of gas for such irrigation purpose at said irrigation water wells.

53] 10. Severe drought conditions affecting the vicinity including said land in recent years have made irrigation necessary and proper for continued argicultural use of said land with reasonable assurance of profit.

11. The use of other fuels to lift water for irrigation from said wells, completed at substantial depths to obtain a reasonably adequate supply of water, would cost annually about $1,380 or $1,770 for utility company gas; $6,060 for propane or butane; $10,100 for gasoline; $4,540 for diesel fuel; and $4,020 for electricity, all as against about $600 for natural gas at the wellhead price, 9.8262¢ per mcf; and equipment for use of diesel fuel or electricity would further cost about $6,000 or $2,400, respectively. Such natural gas

produced on said land, at a reasonable price, is the only fuel whose use will permit necessary irrigation for agricultural use of said land with reasonable assurance of profit.

12. Attempted recovery of compensation by these plaintiffs for damages caused by the threatened disconnection of gas by defendant, Phillips Petroleum Company, and refusal and failure of said defendant to permit the use and purchase of natural gas for such irrigation by plaintiffs, by actions at law, will and would require continuing and numerous suits between the parties, producing a multiplicity of actions.

54] 13. The two irrigation water wells irrigating said land and using gas from the Place Well produced thereon are substantially smaller wells than the water well from the experience of which figures on the volume of gas used were based in Cause No. 6018-C. On the basis of such larger well, the reasonable amount of natural gas used and purchased from the Place Well for irrigation of said land since their completion would amount to approximately 18,545 cubic feet of gas per day, and said water wells are used approximately 150 days per year, or about 2,781,750 cubic feet of gas were reasonably used and necessary for annual irrigation operations, based on the experience of such larger well. The natural gas produced from the Place Well on said land amounted to approximately 52,000,000 cubic feet in the year 1953, and the allowable production therefrom was approximately 50,000,000 cubic feet for said year; so that said two smaller wells used substantially less than 5.3% of the gas produced from said Place Well for irrigation. The pipe line purchaser from defendant has expressed its consent and approval of such use of gas for irrigation purposes.

14. Defendant, Phillips Petroleum Company, on about July 23, 1953, warned and advised the plaintiffs that unless the connection between the irrigation water wells on said land and said defendant's gas line from the Place Well on said land was severed by plaintiffs before September 1, 1953, said defendant would disconnect the same. Said defendant, Phillips Petroleum Company, from July 23, 1953, or thereabout, has threatened and continues to threaten that it will refuse to permit the use and purchase of any natural gas for irrigation purposes by plaintiffs on said land from the gas produced by

the Place Well on said land, and said defendant, from said date, has refused and continues to refuse to undertake any negotiations concerning such use and purchase of gas by plaintiffs for such purpose.

55] Conclusions of Law

The Court makes the following conclusions of law:

1. The Court has jurisdiction of the parties and the subject matter of this action.

2. The said Dale Lewis had authority from defendant, Phillips Petroleum Company, to make the representation, promise, and agreement which he is found to have made in these findings and conclusions; such authority for making such representation, promise and agreement for defendant, Phillips Petroleum Company, is reasonably implied from the authority granted to the said Dale Lewis by defendant; and his authority was, by defendant, Phillips Petroleum Company, made to appear to include authority to make such representation, promise and agreement for defendant, Phillips Petroleum Company, to plaintiffs and farmers generally in the vicinity including said land.

3. Defendant, Phillips Petroleum Company, is obligated, by reason of its conduct, representation, promise and agreement, to permit the use and purchase by plaintiffs at a reasonable price, during the continuance of irrigation operations on said land, from natural gas produced thereon by said defendant, of such amount of natural gas as is reasonably necessary for such irrigation, and plaintiffs are obligated to make any such purchase of natural gas for such irrigation requirements from said defendant.

56] 4. Defendant, Phillips Petroleum Company, is estopped by reason of its conduct, representation, promise and agreement, and reliance by the plaintiffs thereon with said defendant's knowledge, to deny or repudiate such obligation or to refuse permission for such use and purchase of such natural gas by plaintiffs. Said defendant is further estopped to assert the statute of frauds as a defense to avoid such obligation and permission for such use and purchase of such natural gas by plaintiffs; and the repudiation of such obligation and the assertion of the statute of frauds as a

defense in this action is inequitable and unjust, and should not be permitted by a court of equity.

5. Plaintiffs have no adequate remedy at law; plaintiffs would and will suffer irreparable injury from said defendant, Phillips Petroleum Company's threatened disconnection of gas to plaintiffs' irrigation water wells, and defendant's threatened refusal to permit the use and purchase of such natural gas for such purpose by plaintiffs unless equitable relief is granted; attempted recovery of damages at law by these plaintiffs to compensate for injury by such threatened action by said defendant would require a multiplicity of actions, burdensome on the Court and the parties; and the Court finds equitable relief as prayed for to be just and proper, and required by equity and good conscience in the premises.

6. Defendant, Phillips Petroleum Company, its officers,
57] agents, servants and employees, should be restrained and enjoined from disconnecting plaintiffs' gas line connecting their water wells irrigating Section 6, Township 1 North, Range 16 East, Cimarron Meridian, Texas County, Oklahoma, with defendant's producing gas well known as the Place Well located on said land; and from refusing or failing to permit the use and purchase by plaintiffs, at a reasonable price during the continuance of such irrigation from gas produced on said land, of such amount of natural gas as is reasonably necessary for such irrigation on said land.

Dated this 4 day of November, 1955.

Edgar S. Vaught
United States District Judge

Filed November 4, 1955.

58] Judgment.

The above entitled cause was tried by the Court without a jury on September 7th and 8th, 1954; and the Court, having heard and considered the evidence offered and having examined briefs thereafter filed by the parties and being fully advised in the premises, finds:

That the Court has jurisdiction of the parties and the subject matter of the action; that plaintiffs are entitled to final judgment restraining and enjoining the defendant, Phillips Petroleum Company, as prayed for by plaintiffs, by reason of the findings of fact and conclusions of law made by the Court herein on the 4 day of Nov, 1955; that plaintiffs have no adequate remedy at law; that plaintiffs would and will suffer irreparable injury from said defendant, Phillips Petroleum Company's threatened disconnection of gas to plaintiffs' irrigation water wells, and said defendant's threatened refusal to permit the use and purchase of such natural gas for such purpose by plaintiffs, unless equitable relief is granted; that attempted recovery of damages at law by these plaintiffs to compensate for injury by such threatened action by said defendant would require a multiplicity of actions, burdensome on the Court and the parties; and that equitable relief as prayed for is just and proper and required by equity and good conscience in the premises.

It Is Therefore, Ordered, Adjudged And Decreed that defendant, Phillips Petroleum Company, its officers, agents, servants and employees are hereby restrained and enjoined from disconnecting plaintiffs' gas line connecting their water wells irrigating Section 6, Township 1 North, Range 16 East, Cimarron Meridian, Texas County, Oklahoma, with defendant's producing gas well known as the Place Well, located on said land; and from refusing or failing to permit the use and purchase by plaintiffs at a reasonable price, during the continuance of such irrigation, from gas produced on said land, of such amount of natural gas as is reasonably necessary for such irrigation on said land.

Dated this 4 day of Nov., 1955.

Edgar S. Vaught
United States District Judge.

Filed November 4, 1955.

60] Notice Of Appeal.

Notice is hereby given that Phillips Petroleum Company, a corporation, one of the defendants above named, hereby appeals to the United States Court of Appeals for the Tenth Circuit from the final judgment entered in this action on the 4th day of November, 1955.

Dated November 30, 1955.

Rayburn L. Foster
Harry D. Turner
R. M. Williams
Kenneth Heady
Cecil C. Hamilton
Attorneys for Appellant

Filed Nov. 30, 1954.

[An appeal bond was filed November 30, 1955.]

[The designated portions of the transcript of proceedings on motion to remand, the transcript of trial proceedings and exhibits are identical with those in case No. 6015]

69] Clerk's Certificate.

United States Of America, Western District of Oklahoma.

I, Theodore M. Filson, Clerk of the United States District Court for the Western District of Oklahoma, do hereby certify the above and foregoing to be a full, true and complete transcript of the pleadings, record and proceedings in Case No. 6017-Civil, Henry C. Hitch and Christine W. Hitch, husband and wife, Plaintiffs, vs. The Phillips Petroleum Company, a corporation, its agents, servants and all persons acting by and under its authority, and A. M. Rippel, Defendants, as full, true and complete as the said transcript purports to contain and as called for by the designations of contents of record on appeal above set forth.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at Oklahoma City, in said District, this 5th day of January, 1956.

(Seal)

Theodore M. Filson, Clerk,
By Mabel E. Borland
Deputy

Filed United States Court of Appeals Tenth Circuit, Jan. 9, 1956. Robert B. Cartwright, Clerk.

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
No. 5312

PHILLIPS PETROLEUM COMPANY,
a corporation, Appellant,

vs.

THE HITCH LAND AND CATTLE COMPANY,
a corporation, HARRY H. HITCH and
BILL LOGSDON, Appellees.

Statement By Appellant Of Points
On Which It Intends To Rely.

* * * * * *

5. The findings of fact and conclusions of law to the effect that Dale Lewis in about January 1953, or at any other time represented to, promised and agreed with appellees that if appellees undertook the drilling and equipping of an irrigation well on their land appellant would provide natural gas in an amount reasonably necessary for the operation of said well; that until July 1953 it was the general custom, practice and policy of appellant and other companies having producing gas wells in the vicinity to permit the use and purchase of natural gas at reasonable prices and in such amounts as are reasonably necessary for irrigation purposes; that appellees drilled and equipped such irrigation well in reliance upon said representation, promise and agreement and upon said custom, practice and policy; and that appellant had notice and knowledge that the drilling and equipping of said well was done in reliance upon said representation, promise and agreement and upon said custom, practice and policy are unsupported by and in conflict with the evidence and are contrary to law.

* * * * *

15. The findings of fact to the effect that the reasonable amount of natural gas used and purchased from the

Timmons well in 1953 and 1954 for the operation of appellees' irrigation well amounted to approximately 12,000 cubic feet per day; that about 1,800,000 cubic feet of gas were reasonably used and necessary for the annual irrigation operations; and that less than two per cent of the allowable production of the well was used for irrigation are unsupported by and are contrary to the evidence.

* * * * *

[Appellant's statement of points on which it intends to rely is identical, with the exception of points 5 and 15, with the statement of points relied on filed in case No. 5309]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

Pleas And Proceedings Before The Honorable Edgar S. Vaught, Judge Of The United States District Court For The Western District Of Oklahoma, and The Honorable W. R. Wallace, Judge of the United States District Court for the Northern, Eastern and Western District of Oklahoma, Presiding In The Following Entitled Cause:

THE HITCH LAND and CATTLE COMPANY, a corporation, HARRY H. HITCH and BILL LOGSDON, Plaintiffs,

vs.

THE PHILLIPS PETROLEUM COMPANY, a corporation, its agents, servants, and all persons acting for and under its authority, and A. M. RIPPEL, Defendants

No. 6018, Civil.

[The language of the petition for removal, filed September 10, 1953, is substantially identical with that of the petition for removal, filed in case No. 6015, with the exceptions of the numbers of the State Court dockets, the plaintiffs, and description of land.]

5] State Of Oklahoma County Of Texas SS In The District Court In And For Said County And State The Hitch Land And Cattle Company, A Corporation; Harry H. Hitch and Bill Logsdon, Plaintiffs -vs- The Phillips Petroleum Company, A Corporation, its agents, servants and all persons acting by and under its authority and A. M. Rippel, Defendants Case No. 9308.

Petition.

Come now the Plaintiffs, The Hitch Land and Cattle

Company, a Corporation, Harry H. Hitch and Bill Logsdon and for their cause of action against the Defendants, the Phillips Petroleum Company, a Corporation, its agents, servants and all persons acting by or under its authority and A. M. Rippel, allege and state:

That the Plaintiff, The Hitch Land and Cattle Company, is a Corporation duly organized and existing under and by virtue of the laws of the State of Oklahoma, and that the Plaintiff, Harry H. Hitch is a resident of Forth Worth, Texas, and that the Plaintiff, Bill Logsdon, is a resident of Hansford County, Texas.

That the Plaintiff, Harry H. Hitch, is the owner of the fee simple title in and to the West Half (W/2) of Section Thirty-four (34), Township One (1) North, Range Sixteen (16) E.C.M., Texas County, Oklahoma, and that the Plaintiff, The Hitch Land and Cattle Company, a Corporation, is the owner of the fee simple title in and to the Southeast Quarter (SE/4) of Section Thirty-four (34), Township One (1) North, Range Sixteen (16) E.C.M. Texas County, Oklahoma, such Plaintiffs owning all the oil, gas and other mineral rights under said lands, and being together entitled to receive three-fourths of the one-eight royalty accruing off the gas well owned by the Defendants and located on all of Section Thirty-four (34), Township One (1) North, Range Sixteen (16) E.C.M. Texas County, Oklahoma, and that the Plaintiff, Bill Logsdon, is the tenant of both Harry H. Hitch and The Hitch Land and Cattle Company and is farming and operating for agricultural purposes the three-quarter section of land above described.

6] That the Defendant, Phillips Petroleum Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and is duly domesticated and authorized to do business in the State of Oklahoma, and that the said Defendant, Phillips Petroleum Company, as a corporation, is generally engaged in the production of natural gas off and from a large acreage in the southeastern part of Texas County, Oklahoma, and that the Defendant, A. M. Rippel, is the manager of the natural gas department of the said Defendant, Phillips Petroleum Company, a Corporation.

That the Defendant, Phillips Petroleum Company, holds oil and gas leases upon all of Section Thirty-four (34),

Township One (1) North, Range Sixteen (16) E.C.M., Texas County, Oklahoma, and for the past several years has had a producing gas well located on said section which has been unitized for natural gas production purposes, such well being located on the southwest corner of the northeast quarter of said section, such gas well, under the rules and regulations of the Corporation Commission of the State of Oklahoma, being the only gas well that the said Phillips Petroleum Company, a Corporation, is authorized to drill upon said entire section.

That heretofore, to-wit: during the month of January, 1953, the three Plaintiffs herein, acting together, under an agreement and arrangement between them whereby the expenses would be prorated and divided, decided to drill an irrigation water well on the Northwest Quarter (NW/4) of Section Thirty-four (34), Township One (1) North, Range Sixteen (16) E.C.M., provided it were possible to obtain gas for fuel to operate the pump on said irrigation well from the gas well owned by the Defendant, Phillips Petroleum Company, A Corporation, on said section; that in pursuance to said plan the Plaintiffs herein, before incurring any expenses, or taking any steps toward the drilling of said irrigation well, consulted with proper and competent officials of the Phillips Petroleum Company, a Corporation, and especially with one Dale Lewis, Field Superintendent for said Phillips Petroleum Company, for the purpose of determining whether or not natural gas would be available from the gas well owned by Phillips Petroleum Company on said section for use as power in operating the pump on said proposed irrigation well; that the Plaintiffs were then assured by the said Dale Lewis, Field Superintendent for the Phillips Petroleum Company, that natural gas would be available for use as power in operating the pump on such proposed irrigation well, and were further assured that at the proper time the Phillips Petroleum Company would connect the irrigation well with the gas well located on said section.

7] That relying upon this assurance from proper and competent officials of the Phillips Petroleum Company, the Plaintiffs herein proceeded to drill and equip said irrigation well at a total expense of approximately $14,000.00; that during the time that such well was being drilled, the Plaintiffs, at various times, discussed the matter of connecting said irrigation well with the gas well located on said section with proper and competent officials of the Phillips Petroleum Company, and

the Plaintiffs were at all times assured that as quickly as said irrigation well was completed the Phillips Petroleum Company would connect said well with the gas well located on said section, and that Plaintiffs would have the right to purchase and take gas from said gas well for use as fuel in powering the engine on said irrigation well at the going and established field price for natural gas in the Texas County area of the Guymon-Hugoton Gas Field, which said going field price is now approximately 9.82¢ per thousand cubic feet, which price the Plaintiffs are ready, willing and able to pay.

Plaintiffs further allege that said irrigation well was completed on or about April 1, 1953, and that as previously agreed upon the said Defendant, Phillips Petroleum Company, did connect its gas well located on said section, as above described, with the irrigation well located on said section and belonging to these Plaintiffs, and that the Plaintiffs have at all times since been using gas from the gas well of said Defendant, Phillips Petroleum Company, for the use as intended, and as agreed upon, in furnishing fuel to power their engine in pumping water from said irrigation well.

8] Plaintiffs further allege that thereafter and at various times the said Dale Lewis, Field Superintendent for the Phillips Petroleum Company, agreed to furnish to the Plaintiffs a written contract covering the terms and conditions of the agreement as theretofore had orally, but that the Defendant, Phillips Petroleum Company, after said well was drilled and equipped and connected with the gas well, failed, neglected and refused to furnish such written agreement, although it was legally obligated to do so.

The Plaintiffs further allege that they had no intimation or no knowledge that the Defendant, Phillips Petroleum Company, intended to violate its oral agreement with these Plaintiffs until sometime shortly after July 23, 1953, at which time they received a letter from the Defendant, A. M. Rippel, manager of the natural gas department of the Phillips Petroleum Company, advising them that unless they voluntarily severed the connection between the irrigation well and the gas well of the Defendant on or before September 1, 1953, the said Defendant, Phillips Petroleum Company, would,

without further notice, disconnect the same; a copy of said letter being hereto attached, marked "Exhibit A," and by reference made a part hereof.

Plaintiffs further allege that the statement in said letter that the previous connection was made without the knowledge or consent of the Phillips Petroleum Company is entirely and completely false, as the servants and employees of the said Phillips Petroleum Company actually made the gas connection at the time the irrigation well was connected with the gas well.

9| Plaintiffs further allege that had they not had the assurance of proper and competent officials of the Defendant, Phillips Petroleum Company, that natural gas would be available from said gas well for use as fuel in furnishing power for the pump on the irrigation well, which they proposed to drill, they would not have incurred the expense of approximately $14,000.00 in drilling and equipping said irrigation well, and the Plaintiffs specifically allege and state that in incurring such expenditure and in drilling and equipping said irrigation well, they relied upon the oral promises and agreements of proper and competent officials of the Phillips Petroleum Company that natural gas would be available from said gas well for use by the Plaintiffs in the operation of said irrigation well; that Plaintiffs herein, in good faith, relied upon the conduct and promises of the said Phillips Petroleum Company, and were thereby led to change their position for the worse in the event such natural gas is not available as agreed upon, and that the Defendants herein are now equitably estopped from taking the action as threatened in the letter attached hereto and marked "Exhibit A," as such threatened act, if permitted to be performed by said Defendants, would be in violation of the oral assurance and the oral agreements as had between the parties hereto, and would be wholly illegal and would work great and irreparable damage to these Plaintiffs, and that the Plaintiffs have no adequate remedy at law.

Wherefore, Plaintiffs pray for a judgment against all of the above named Defendants perpetually enjoining and restraining them from disconnecting their gas well as located on the above described section from the irrigation well as owned by the Plaintiffs thereon, and that said Defendants be perpetually enjoined and restrained from molesting or disturbing the present connection as now existing between said gas well and said

irrigation well, and for all proper and equitable relief and for costs.

Plaintiffs further allege that unless the said Defendant, the Phillips Petroleum Company, a Corporation, its agents, servants and all persons acting by or under its authority and A. M. Rippel are forthwith and without notice enjoined and restrained from doing the said threatened unlawful act, the said Plaintiffs will suffer irreparable damage and injury; Wherefore, Plaintiffs pray that a temporary restraining order against the said Defendants be granted forthwith.

The Hitch Land And Cattle Company,
A Corporation;
Harry H. Hitch;
Bill Logsdon.
Tryon & Sweet
Their Attorneys.

[Verified]

12] Exhibit A.

Phillips Petroleum Company
Bartlesville, Oklahoma
July 23, 1953

Registered Mail

Mr. R. E. Lee, 619 W. Fourth, Guymon, Oklahoma.

Dear Sir: Our attention has been called to the fact that you are connected with and are taking gas from our Timmons Well in Section 32-1N-16E, Texas County, Oklahoma, for irrigation purposes on said land. Such connection was without our knowledge or consent and your taking of such gas is without right.

To avoid unnecessary hardship on your part due to an immediate loss of a fuel supply, we will defer taking action until September 1, 1953, but will expect you not later than such date to voluntarily sever such connection, and failing to do so, we will, without further notice, disconnect the same.

We will at that time estimate the volume of gas so taken and bill you therefor.

Yours very truly,
Phillips Petroleum Company
By A. M. Rippel

AMR:bjj

[The jurisdictional statement is identical with the jurisdictional statement in case No. 6015 except for the style and number of the case.]

[The minute order overruling plaintiff's motion to remand is identical with that set out in case No. 6015]

26] Answer And Counterclaim Of Defendants Phillips Petroleum Company.

1. The complaint (petition filed in the District Court in and for Texas County, Oklahoma) fails to state a claim against defendant upon which relief can be granted.

2. Defendant admits that the plaintiff The Hitch Land and Cattle Company is an Oklahoma corporation and that the plaintiff Harry H. Hitch is a resident of Oklahoma and that the plaintiff Bill Logsdon is a resident of Texas; that defendant is a Delaware corporation authorized to do business in the State of Oklahoma; that defendant is engaged in the production of natural gas; and that defendant A. M. Rippel is Manager of the Natural Gas Department of defendant Phillips Petroleum Company.

3. Defendant is without knowledge or information sufficient to form a belief as to the truth of plaintiffs' averments as to the interests owned by them in the property described in the complaint. Defendant admits that it is the owner of an oil and gas lease on said property and has drilled a producing gas well thereon; and that plaintiffs have drilled an irrigation well located on said property. Defendant is without knowledge or information sufficient to form a belief as to the truth of the plaintiffs' averments as to the date said irrigation well was drilled and the amounts expended by plaintiffs in drilling said well. Defendant admits that the letter, a

copy of which is attached to the complaint as Exhibit "A", was sent to the plaintiffs.

27] 4. Defendant specifically denies that any agreement, oral or written, was made and entered into by this defendant or any authorized agent or employee of this defendant whereby defendant agreed to furnish gas to the plaintiffs or whereby this defendant agreed to enter into a written contract for the furnishing of gas to the plaintiffs. Defendant further states that neither Dale Lewis, field superintendent for Phillips Petroleum Company, nor any other agent, employee or official of defendant with whom plaintiffs may have consulted, had any authority to make and enter into any contract, oral or written, for the furnishing of gas to plaintiffs from defendant's gas well. Without admitting any such contract was made and in the alternative, defendant further states that if any such agreement to furnish gas was made by Dale Lewis, or any other agent or employee of this defendant, both the plaintiffs and this defendant, through their agents and employees, contemplated that said agreement would not become effective unless and until said agreement was reduced to writing and executed by an officer of this defendant, and none of these things were done.

5. The alleged contract between plaintiffs and this defendant referred to in the complaint is a contract that, by its terms, is not to be performed within one year from the making thereof, and no memorandum of said contract was ever made in writing, and said contract is therefor void under the Oklahoma statute of frauds.

6. The alleged contract between plaintiffs and this defendant referred to in the complaint is an agreement for the sale of goods at a price not less than $50.00, and no memorandum of said contract was ever made in writing, and said contract is therefore void under the Oklahoma statute of frauds.

7. Defendant admits that the plaintiffs have been using natural gas from defendant Phillips Petroleum Company's well, but defendant specifically denies that the connection to said well was made by this defendant Phillips Petroleum Company or by any authorized employee of this defendant.

28] 8. Defendant denies each and all other allegations not herein specifically admitted.

Counterclaim

By way of counterclaim defendant alleges that the making of the connection by plaintiffs to the well of this defendant and the taking and using of gas by plaintiffs therefrom, as herein alleged by plaintiffs, is without legal right and unlawful and that although defendant has demanded of plaintiffs that they disconnect said connection and discontinue the taking and use of such gas, as admitted by plaintiffs in their complaint, plaintiffs have failed and refused to so disconnect said connection and to cease taking and using said gas.

Wherefore, defendant Phillips Petroleum Company, having fully answered, prays that plaintiffs take nothing by reason of their complaint filed herein but that defendant on its counterclaim herein be granted an injunction against plaintiffs enjoining plaintiffs from further maintaining their said connection to the well of this defendant and from further taking and using gas therefrom, and for such other and further relief to which the defendant may be entitled.

Harry D. Turner
R. M. Williams
Kenneth Heady
All of Bartlesville, Oklahoma
Cecil C. Hamilton
Attorneys for Defendant
Phillips Petroleum Company

Filed Sept. 14, 1953.

[Plaintiffs' reply and amendment to reply to answer and counterclaim are substantially identical with the reply and amendment to reply filed in case No. 6015.]

[The opinion is identical with the opinion in case No. 6015.]

Phillips Petroleum Co. vs. Buster et al.

Findings Of Fact And Conclusions Of Law.

The above entitled cause was tried by the Court without a jury on September 7th and 8th, 1954. The cause was tried on said dates in conjunction with Nos. 6015, 6016 and 6017, and the evidence was presented and considered jointly to apply to all four causes. The Court, having heard and considered the evidence, and having examined briefs thereafter filed by the parties, and being fully advised in the premises, does hereby make the following findings of fact and conclusions of law:

Findings of Fact

The Court finds:

1. The Hitch Land and Cattle Company is a corporation organized and existing under the laws of the State of Oklahoma. Harry H. Hitch and Bill Logsdon are residents and citizens of the State of Texas, and the two tracts of land hereinafter described are operated as one farm unit by Bill Logsdon with agreement of the owners.

2. Phillips Petroleum Company is a corporation organized and existing under the laws of the State of Delaware, and A. M. Rippel is a nominal party in this action and does not affect the jurisdiction of the Court.

3. Plaintiff, Harry H. Hitch, is owner in fee simple of the West Half of Section 34, Township 1 North, Range 16 East, Cimarron Meridian, Texas County, Oklahoma; plaintiff; The Hitch Land and Cattle Company is owner in fee simple of the Southeast Quarter of Section 34, Township 1 North, Range 16 East, Cimarron Meridian, Texas County, Oklahoma; and plaintiff, Bill Logsdon, is the tenant of both of said landowners, farming the two tracts of land as the same unit for agricultural purposes.

4. Phillips Petroleum Company holds oil and gas leases on all the above described land and has a producing gas well, known as the Timmons Well, located on said land, at approximately the center of said Section 34.

5. Dale Lewis has, since early 1951, been the field

superintendent of Phillips Petroleum Company in Texas County, Oklahoma, and for the area including the above described land. The said Lewis was the agent and servant of Phillips Petroleum Company and was authorized to and did make arrangements for and on behalf of said company, and represented said company, in connection with arrangements with farmers, including these plaintiffs, concerning operation of gas wells and related operations of said company generally in the vicinity of Texas County, Oklahoma; and in particular the said Lewis was authorized to and did make arrangements for and on
56] behalf of said company, and represented said company in connection with arrangements for the sale of gas for the operation of irrigation water wells in said vicinity, including said land, to the extent and in the manner as shown in Findings No. 5 and No. 6, hereof, and in doing all other things for and on behalf of said company which he is found herein to have done; and since early 1951, the Phillps Petroleum Company held out the said Dale Lewis to these plaintiffs and to farmers generally in the vicinity including said land in Texas County, Oklahoma, as its spokesman, agent and servant authorized to conduct negotiations for and to represent said company in negotiations for the sale of natural gas for operation of irrigation water wells in said vicinity including said land; and the said Lewis had, and it was made to appear by defendant, Phillips Petroleum Company, to these plaintiffs and to farmers generally in the vicinity including said land, that the said Lewis had authority to do all things which he is found herein to have done and to make all of the commitments he is found herein to have made for and on behalf of the said Phillips Petroleum Company.

6. In about January, 1953, the said Dale Lewis, being such agent and representative of Phillips Petroleum Company, represented, promised and agreed with plaintiffs that if they undertook drilling and equipping of an irrigation well on said land last hereinabove described, said Phillips Petroleum Company would provide natural gas produced by said company from said land in the amount reasonably necessary for the operation of said well. In reliance upon said representative, promise and agreement, and upon the custom, practice, and policy stated in Finding No. 12, plaintiffs subsequently drilled and equipped the irrigation water well on said land at a cost of approximately $14,000, and made further expenditures for preparation of the land for irrigation and purchase of equipment

for such purpose amounting to approximately $15,000, and the said Phillips Petroleum Company did, from and after about April 9, 1953, permit plaintiffs to use and purchase natural gas from the gas well on said land reasonably necessary to operate such irrigation water well.

57] 7. Said irrigation water well on said land as drilled and equipped by plaintiffs is about 360 feet in depth, has a capacity of about 1,000 gallons of water per minute, and from the commencement of its operation by natural gas on about April 9, 1953, said well has adequately irrigated about 320 acres of land during the remainder of 1953 and during 1954 to the time of trial.

8. Phillips Petroleum Company, by and through its agents, servants, and employees performing duties on said land in the vicinity of said irrigation water well, had knowledge and notice of plaintiffs' expenditures in drilling and equipping of said water well and preparation of said land for irrigation, and that all of such expenditures and preparations were in reliance upon the representation, promise, and agreement, custom, practice and policy of defendant, Phillips Petroleum Company, concerning the providing of natural gas produced by the said company from said land reasonably necessary for the operation of said water well. Said defendant, by and through its agents, servants and employees made the connection of said company's gas line with plaintiffs' line for receipt of gas for operation of said well; and said defendant, since said connection on about April 9, 1953, has had notice and knowledge of such use of gas for such irrigation purpose at said irrigation water well.

58] 9. Severe drought conditions affecting the vicinity, including said land in recent years have made irrigation necessary and proper for continued agricultural use of said land with reasonable assurance of profit.

10. The irrigation well drilled on said land necessary to obtain a reasonably adequate supply of water, which was found, is about 360 feet deep. The use of other fuels to lift water for irrigation from said well would cost annually about $845 or $1,085 for utility company gas; $3,920 for propane or butane; $6,535 for gasoline; $2,946 for diesel fuel; and $2,680 for electricity, all as against about $390

for natural gas at the wellhead price, 9.8262¢ per mcf; and equipment for use of diesel fuel or electricity would further cost about $5,000 or $1,500, respectively. Such natural gas produced on said land, at a reasonable price, is the only fuel whose use will permit necessary irrigation for agricultural use of said land with reasonable assurance of profit.

11. Attempted recovery of compensation by these plaintiffs for damages caused by the threatened disconnection of gas by defendant, Phillips Petroleum Company, and refusal and failure of said defendant to permit the use and purchase of natural gas for such irrigation by plaintiffs, by actions at law, will and would require continuing and numerous suits between the parties, producing a multiplicity of actions.

12. Until about July, 1953, it was the general custom, practice and policy of defendant, Phillips Petroleum Company, and other companies having producing gas wells in the vicinity of said land in Texas County, Oklahoma, to permit the use and purchase of natural gas at reasonable prices and in such amount as is reasonably necessary for such irrigation operations from gas wells on irrigated land.

59] 13. The reasonable amount of natural gas used and purchased from the Timmons Well on said land in 1953 and 1954, for the operation of the irrigation water well on said land amounted to approximately 12,000 cubic feet per day, and said water well is used approximately 150 days per year, or about 1,800,000 cubic feet of gas were reasonably used and necessary for annual irrigation operations. The natural gas produced from the Timmons Well on said land amounted to approximately 92,000,000 cubic feet in 1953, and the allowable production of natural gas from said well during said year was approximately 97,000,000 cubic feet, so that less than two per centum (2%) of the said gas was used for irrigation. The pipe line purchaser from defendant has expressed its consent and approval of such use of gas for irrigation purposes.

14. Defendant, Phillips Petroleum Company, on about July 23, 1953, warned and advised plaintiffs that unless the connection between the irrigation water well on said land and said defendant's gas line from the Timmons Well on said land was severed by plaintiffs before September 1, 1953, said defendant would disconnect the same. Said defendant, Phillips

Petroleum Company, from July 23, 1953, has threatened and continues to threaten that it will refuse to permit the use and purchase of any natural gas for irrigation purposes by plaintiffs on said land from the gas produced by the Timmons Well on said land, and said defendant from said date has refused and continues to refuse to undertake any negotiations concerning such use and purchase of gas by plaintiffs for such purpose.

60] Conclusions of Law

The Court makes the following conclusions of law:

1. The Court has jurisdiction of the parties and the subject matter of this action.

2. The said Dale Lewis had authority from defendant, Phillips Petroleum Company, to make the representation, promise, and agreement which he is found to have made in these findings and conclusions; such authority for making such representation, promise and agreement for defendant, Phillips Petroleum Company, is reasonably implied from the authority granted to the said Dale Lewis by defendant; and his authority was, by defendant Phillips Petroleum Company, made to appear to include authority to make such representation, promise and agreement for defendant, Phillips Petroleum Company, to plaintiffs and farmers generally in the vicinity including said land.

3. Defendant, Phillips Petroleum Company, is obligated, by reason of its conduct, representation, promise and agreement, to permit the use and purchase by plaintiffs at a reasonable price, during the continuance of irrigation operations on said land, from natural gas produced thereon by said defendant, of such amount of natural gas as is reasonably necessary for such irrigation, and plaintiffs are obligated to make any such purchase of natural gas for such irrigation requirements from said defendant.

61] 4. Defendant, Phillips Petroleum Company, is estopped by reason of its conduct, representation, promise and agreement, and reliance by the plaintiffs thereon with said defendant's knowledge, to deny or repudiate such obligation or to refuse permission for such use and purchase of such

natural gas by plaintiffs. Said defendant is further estopped to assert the statute of frauds as a defense to avoid such obligation and permission for such use and purchase of such natural gas by plaintiffs; and the repudiation of such obligation and the assertion of the statute of frauds as a defense in this action is inequitable and unjust, and should not be permitted by a court of equity.

5. Plaintiffs have no adequate remedy at law; plaintiffs would and will suffer irreparable injury from said defendant, Phillips Petroleum Company's threatened disconnection of gas to plaintiffs' irrigation water well, and defendant's threatened refusal to permit the use and purchase of such natural gas for such purpose by plaintiffs unless equitable relief is granted; attempted recovery of damages at law by these plaintiffs to compensate for injury by such threatened action by said defendant would require a multiplicity of actions, burdensome on the Court and the parties; and the Court finds equitable relief as prayed for to be just and proper, and required by equity and good conscience in the premises.

6. Defendant, Phillips Petroleum Company, its officers, agents, servants and employees, should be restrained and enjoined from disconnecting plaintiffs' gas line connecting their water well irrigating the West Half and the Southeast Quarter of Section 34, Township 1 North, Range 16 East, Cimarron Meridian, Texas County, Oklahoma, with defendant's producing gas well, known as the Timmons Well, located
62] on said land; and from refusing or failing to permit the use and purchase by plaintiffs at a reasonable price, during the continuance of such irrigation, from gas produced on said land, of such amount of natural gas as is reasonably necessary for such irrigation on said land.

Dated this 4th day of November, 1955.

Edgar S. Vaught
U. S. District Judge

Filed November 4, 1955

Phillips Petroleum Co. vs. Buster et al.

63] Judgment.

The above entitled cause was tried by the Court without a jury on September 7th and 8th, 1954; and the Court, having heard and considered the evidence offered and having examined briefs thereafter filed by the parties, and being fully advised in the premises, finds:

That the Court has jurisdiction of the parties and the subject matter of the action; that plaintiffs are entitled to final judgment restraining and enjoining the defendant, Phillips Petroleum Company, as prayed for by plaintiffs, by reason of the findings of fact and conclusions of law made by the Court herein on the 4 day of Nov., 1955; that plaintiffs have no adequate remedy at law; that plaintiffs would and will suffer irreparable injury from said defendant, Phillips Petroleum Company's threatened disconnection of gas to plaintiffs' irrigation water well, and said defendant's threatened refusal to permit the use and purchase of such natural gas for such purpose by plaintiffs, unless equitable relief is granted; that attempted recovery of damages at law by these plaintiffs to compensate for injury by such threatened action by said defendant would require a multiplicity of actions, burdensome on the Court and the parties; and that equitable relief as prayed for is just and proper, and required by equity and good conscience in the premises.

64] It Is, Therefore, Ordered, Adjudged And Decreed that defendant, Phillips Petroleum Company, its officers, agents, servants and employees, are hereby restrained and enjoined from disconnecting plaintiffs' gas line connecting their water well irrigating the West Half (W 1/2) and the Southeast Quarter (SE 1/4) of Section 34, Township 1 North, Range 16 East, Cimarron Meridian, Texas County, Oklahoma, with defendant's producing gas well, known as the Timmons Well, located on said land; and from refusing or failing to permit the use and purchase by plaintiffs at a reasonable price, during the continuance of such irrigation, from gas produced on said land, of such amount of natural gas as is reasonably necessary for such irrigation on said land.

Dated this 4 day of Nov., 1955.

Edgar S. Vaught
United States District Judge

Filed November 4, 1955.

65] Notice Of Appeal.

Notice is hereby given that Phillips Petroleum Company, a corporation, one of the defendants above named, hereby appeals to the United States Court of Appeals for the Tenth Circuit from the final judgment entered in this action on the 4th day of November, 1955.

Dated November 30, 1955.

Rayburn L. Foster
Harry D. Turner
R. M. Williams
Kenneth Heady
Cecil C. Hamilton
Attorneys for Appellant

Filed Nov. 30, 1955.

[An appeal bond was filed Nov. 30, 1955.]

[The designated portions of the transcript of proceedings on motion to remand, the transcript of trial proceedings and exhibits are identical with those in case No. 6015.]

74] Clerk's Certificate.

United States Of America, Western District of Oklahoma. SS:

I, Theodore M. Filson, Clerk of the United States District Court for the Western District of Oklahoma, do hereby certify the above and foregoing to be a full, true and complete transcript of the pleadings, record and proceedings in Case No. 6018-Civil, The Hitch Land and Cattle Company, a corporation, Harry H. Hitch and Bill Logsdon, Plaintiffs, vs. The Phillips Petroleum Company, a corporation, its agents, servants, and all persons acting for and under its authority, and A. M. Rippel, Defendants, as full, true and complete as the said transcript purports to contain and as called for by the designations of contents of record on appeal above set forth.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at Oklahoma City, in said District, this 5th day of January, 1956.

Theodore M. Filson, Clerk
By Mabel E. Borland
Deputy.

(Seal)

Filed United States Court of Appeals Tenth Circuit, Jan. 9, 1956, Robert B. Cartwright, Clerk.

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In The
Supreme Court of the United States

October Term, 1956

No. ~~1056~~ 162

PHILLIPS PETROLEUM COMPANY,
a Corporation,
Petitioner,

VERSUS

MAYOE PORTER BUSTER and THE HITCH LAND AND CATTLE COMPANY, a Corporation, HARRY M. HITCH and BILL LOGSDON,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

RAYBURN L. FOSTER,
HARRY D. TURNER,
R. M. WILLIAMS,
WILLIAM J. ZEMAN,
Bartlesville, Oklahoma;
CECIL C. HAMILTON,
REFORD BOND,
Oklahoma City, Oklahoma,
Attorneys for Petitioner.

JUNE, 1957.

KING LAW BRIEF CO., 222 N.W. THIRD, OKLAHOMA CITY, — PHONE FO 5-2969

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I. The decision of the Court of Appeals to the effect that a unilateral promise may be enforced as a continuing contract of sale when the term, price and quantity involved are not specified is in conflict with decisions of this Court, of other Courts of Appeals, and of the Supreme Court of Oklahoma:

(a) A holding that a statement may be enforced as a continuing contract of sale without reference to term, price or quantity was necessary to the decision of the Court of Appeals 12

(b) The holding of the Tenth Circuit conflicts with the decisions of this Court, of other Courts of Appeals, and of the Supreme Court of Oklahoma which hold that there is no enforceable promise when the term, price and quantity are not specified 13

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III. Under the facts in these cases any alleged obligation of Phillips would be unenforceable and the decision of the Court of Appeals that such law of specific performance would not apply to an injunction suit conflicts with the decisions of this Court and of other Courts of Appeals.

(a) A holding that injunction against breach of an obligation is not equivalent to specific performance thereof was necessary to the decision by the Court of Appeals 24

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Appendix

In The
Supreme Court of the United States

October Term. 1956

No.

PHILLIPS PETROLEUM COMPANY,
a Corporation,

Petitioner,

VERSUS

MAYOE PORTER BUSTER and THE HITCH LAND AND CATTLE COMPANY, a Corporation, HARRY M. HITCH and BILL LOGSDON,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

Phillips Petroleum Company ("Phillips") prays that Writ of Certiorari issue to review two judgments of the United States Court of Appeals for the Tenth Circuit affirming two judgments of the United States District Court for the Western District of Oklahoma enjoining

Phillips from disconnecting respondents' gas line and from refusing to supply natural gas to the respondents (plaintiffs) at a reasonable price during the continuance of irrigation by the plaintiffs from gas produced on their land of such amount of gas as is reasonably necessary for such irrigation.

OPINIONS BELOW

The opinion of the Court of Appeals (Appendix A hereof), written by Chief Judge Bratton, concurred in by Judge Pickett, with Judge Lewis specially concurring, is reported in 241 F. 2d 178.

The opinion of the District Court for the Western District of Oklahoma (R. 23) is reported in 139 F. Supp. 594.

JURISDICTION

The judgments of the Court of Appeals were entered on January 2, 1957 (Appendix B). Petition for rehearing was filed January 21, 1957, and denied March 5, 1957 (Appendix C).

Jurisdiction of this Court is invoked under 28 U. S. C., Section 1254(1).

QUESTIONS PRESENTED

The area superintendent of Phillips told the plaintiffs that Phillips would furnish them gas for irrigation pur-

poses but there was no discussion as to the terms upon which or the period during which the gas would be furnished other than by a reference to a printed form contract under which other landowners in the area had obtained gas from Phillips and which provided for termination by either party. The trial court found that the area superintendent was apparently authorized to make such representations and that the plaintiffs had expended sums of money in reliance on those representations and on the custom of Phillips to furnish gas. The judgment of the District Court enjoined Phillips from refusing to supply gas during the continuance of irrigation, from gas produced on the plaintiffs' land, at a reasonable price and in amounts reasonably necessary for said irrigation. The Court of Appeals affirmed the judgments on the theory that Phillips had an obligation which arose out of an estoppel and that it could be enforced by injunction without reference to the law regarding specific performance of obligations. The Court of Appeals also held that it was unnecessary that there be any mention of term, price or quantity of gas to be furnished in order to have an enforceable obligation.

Questions presented are:

1. Whether an oral unilateral promise to sell a commodity may be enforced as a continuing obligation to sell personalty when the term, price and quantity of the alleged obligation are not specified.

2. Whether a promise may be enforced under the doctrine of promissory estoppel when it would be unenforceable under ordinary contract law because of indefiniteness.

3. Whether an injunction against breach of an alleged obligation may be granted under facts which would not permit of specific performance.

4. Whether such judgment violates Rule 65(d) by failure to be specific in terms[1].

---

[1] If the Writ is granted other questions presented are: (1) Whether Phillips' area superintendent was apparently authorized to represent that Phillips would furnish gas for a perpetual term; (2) Whether the statements of Lewis were unenforceable by reason of being a mere contract to make a contract; (3) Whether the alleged oral contract was within the Statute of Frauds; (4) Whether the doctrine of promissory estoppel is the law in Oklahoma; (5) Whether the elements of an estoppel are present; (6) Whether the alleged oral contract or promissory estoppel is unenforceable for want of mutuality of obligation and remedy; (7) Whether the plaintiffs, as a matter of law, could reasonably rely on the representations of the Phillips' area superintendent; (8) Whether the plaintiffs could reasonably rely on a perpetual term, the area superintendent having made no reference to a term; (9) Whether a promissory estoppel requires that the promissor reasonably expect reliance on the promise by the promisee.

STATEMENT

These two cases were originally filed by the respondents in the state district court of Texas County, Oklahoma, and on the ground of diversity of citizenship were removed by Phillips to the federal court (R. 5, 237).

Although the two cases were filed at the same time, against the same defendant and involving the same general subject matter, and for that reason consolidated for trial, the plaintiffs and the facts relied on for relief are different in each case.

Because of the single record and to avoid duplication in respect to matters that are common to both cases, a single brief was filed in the Court of Appeals, covering these two cases in addition to two other cases which are not here involved. This petition prays for reversal of both cases.

General Circumstances

In each case plaintiffs are the owners or tenants of land in Texas County, Oklahoma, on which Phillips is operating a gas well under an oil and gas lease. Plaintiffs' rights are subject to said leases and the only right to the gas which the plaintiffs have under their leases is the express reservation of gas for domestic purposes in the principal dwelling house on each lease (R. 126).

Phillips produces gas over a large area in the vicinity of plaintiffs' land and all of this gas is dedicated by

contract and sold by Phillips to Panhandle Eastern Pipe Line Company after processing by Phillips (R. 136).

Beginning in 1950 Phillips began to receive requests for gas to operate engines used by Phillips' lessors to pump water for irrigation. As an accommodation, and with the acquiescence of Panhandle Eastern, Phillips contracted to furnish gas to eight of its lessors in Oklahoma and Texas, utilizing for this purpose a printed form of contract which provided that the gas sold should not exceed 1% of the gas produced and also providing that the contract was terminable by either party at the end of each annual period on thirty days' notice (R. 131-132). Other than in those eight instances Phillips was not in the business of distributing gas, but only produces, gathers, processes and sells gas to interstate pipe line purchasers (R. 136).

The plaintiffs herein began to use Phillips' gas to irrigate, pursuant to transactions which will be described later. Other persons, who were plaintiffs in two cases consolidated for trial with the two cases at bar, connected their lines to Phillips' wells and began to take gas, relying on an alleged custom and usage.

In 1953, it began to appear to Phillips that the demand for irrigation gas would increase until Phillips would be unable to supply irrigation gas and comply with its previous commitments. Phillips determined that it must cease to furnish irrigation gas for the reasons that

the gas was committed for the life of production, that it was required in the manufacture of gasoline and that Phillips did not wish to engage in the business of distributing gas. The plaintiffs were informed that they must disconnect from Phillips' gas well (R. 134-136).

Suits were filed seeking to permanently enjoin Phillips from disconnecting the plaintiffs' irrigation gas lines from Phillips' wells. A trial was had, and judgments were rendered for plaintiffs. The Court of Appeals affirmed and a rehearing was denied.

Facts Peculiar to the Hitch Land Company Case

In the *Hitch Land Company* case, one Lewis, the area superintendent of Phillips, was visited by two of the plaintiffs in January of 1953. Lewis told the plaintiffs that Phillips would make gas available to them, that several farmers there were using gas for irrigation and that there would be a contract to be signed; that if the plaintiffs didn't have water there wouldn't be any use to sign the contract, and if they did, that a contract could be negotiated later (R. 64, 75, 78). The terms of the contract were not mentioned nor were they ever discussed or negotiated (R. 64, 80). At all times the plaintiffs were willing to pay the field price for gas supplied to them (R. 73, 76). The plaintiffs drilled an irrigation well, laid a line to Phillips' gas well and Phillips connected their line

(R. 83). In July, 1953, Phillips gave notice to the plaintiffs that they must disconnect from the gas well.

Facts Peculiar to the Buster Case

Buster knew that others were using natural gas for irrigation in his area and that they had signed contracts with Phillips to purchase the gas (R. 99, 104), but he did not know the terms of the contracts under which Phillips furnished the gas. He made no inquiry as to the terms under which the gas was supplied but began to drill a water well (R. 100). Just before completion of this water well, during the latter part of December, 1952, or the first part of January, 1953, Lewis, Phillips' area superintendent, talked with Buster and told him to connect his irrigation well to Phillips' gas well and that he (Lewis) would put a meter on and bring a contract by for Buster to sign (R. 100-101). The terms of a contract were not discussed (R. 94, 104), except possibly the price (R. 95, 105). Buster then bought equipment to operate his well, laid a line and connected it to Phillips' gas well.

In May, 1953, Lewis brought contract forms to Buster, who objected to the clauses limiting the gas to be furnished to 1% of production and allowing Phillips to terminate on thirty days' notice at the end of every contract year (R. 100-101). The plaintiffs later signed the contract (R. 95, 101) after Lewis informed them that

some lessors were being cut off in Texas. Phillips never executed the contract, but gave notice in July, 1953, that plaintiffs must disconnect their line.

Plaintiffs admitted that Lewis' assurance that gas would be available was not the reason for drilling the well (R. 97-98, 103-104).

Theories of the Courts Below

The District Court for the Western District of Oklahoma (133 F. Supp. 594, R. 23) concluded that Lewis had apparent authority to bind his company in the alleged oral contracts for the reason that these plaintiffs recognized Lewis as Phillips. The trial court was cognizant of the fact that Lewis had stated that later written contracts would be provided (R. 34), but apparently was of the opinion that Lewis' statement that the plaintiffs should go ahead and drill the wells and that gas would be furnished was enough to make nugatory his statements that it would be necessary to sign a contract later.

In short, the theory of the trial court was that there was an oral contract between Phillips and the plaintiffs to the effect that "You dig your wells, we'll furnish the gas." (R. 34.)

The Court of Appeals then adopted a theory of promissory estoppel, thus avoiding the objection that there had been no consideration for the promise of Lewis.

At this point the Court of Appeals was in the position of having a promise to enforce but of being without sufficient terms to make it definite and certain enough to be enforceable, had the promise been made pursuant to a simple contract. There was only the bare statement in each case that Phillips would furnish gas (R. 70).

Phillips urged various defenses which must have prevailed if the asserted obligation was to be treated as an ordinary contract, but the Court of Appeals found that the law of contracts would not apply since these were cases of estoppel, and that the law of specific performance would not apply since these actions had been brought as suits for injunction rather than for specific performance. In effect a new type of cause of action was created, the elements of which were apparently a statement by the defendant which could be construed as a promise and a change of position, whether in reasonable reliance or not, on the part of the plaintiff.

There remained the problem of Phillips' defense of indefiniteness and uncertainty. The rule requiring that a promise be certain before it can be enforced is not only a rule of law but is one of necessity since the promise cannot be enforced without knowing what it is that has been promised. To meet this difficulty the Court of Appeals had implied certain essential terms. The term of the contract was implied to be for as long as gas was produced

and the plaintiffs should irrigate, or, in other words, a perpetual term. The price of the gas was implied to be the field price. The amount involved was implied to be whatever amount the plaintiffs wished to take for irrigation. It was held that there was certainty even when these essential terms were not specified.

The uncertain nature of the obligations sought to be enforced resulted in a situation where the judgment of the court below could not be phrased in such a way as to comply with Rule 65(d). This was not touched on by the Court of Appeals.

There was still another problem. The conversations which each of the plaintiffs had with Lewis had apparently been preliminaries to the execution of a form contract which was used by Phillips for supplying gas to their lessors. This form contract contained a termination clause which would have precluded the plaintiffs from obtaining the relief sought. A peculiar dilemma arose. The plaintiffs were in the position of urging that the negotiations had not gone far enough to warrant a reference to the form contract to supply missing terms of Phillips' obligation, but that there had been sufficient negotiations to warrant the enforcement of an obligation more favorable to plaintiffs than the ones for which they had been negotiating. Neither court nor counsel for plaintiffs were able to reconcile this theoretical difficulty.

REASONS FOR GRANTING THE WRIT

I.

The decision of the Court of Appeals to the effect that a unilateral promise may be enforced as a continuing contract of sale when the term, price and quantity involved are not specified is in conflict with decisions of this Court, of other Courts of Appeals, and of the Supreme Court of Oklahoma.

(a) A holding that a statement may be enforced as a continuing contract of sale without reference to term, price or quantity was necessary to the decision of the Court of Appeals.

The opinion of the Court of Appeals held that the "oral agreements" were not void for indefiniteness and states specifically that the element of quantity would be "implied" to be the amount reasonably necessary for the operation of the well during the irrigation season. Phillips raised the objections that there was no provision for the term of the obligation or for the price of the gas to be sold, but the Court of Appeals did not touch on this.

There was no contention at any time during the progress of the cases that Lewis had represented or made any statement regarding the term, quantity and (except possibly as to Buster) the price of the proposed gas sale agreement. Yet the trial court entered its judgment decreeing in effect that Phillips should furnish gas for the life of production and during irrigation, at a reasonable

price, and in such quantities as the plaintiffs might desire for irrigation. These judgments purported to enforce oral agreements between Phillips and the plaintiffs.

In view of these facts, the Court of Appeals must have held that there could be an enforceable obligation for the sale of personalty over a continuing period of time without the necessity for agreeing upon the term which such agreement was to run, the price at which the sales were to be made, or the quantity to be sold.

(b) The holding of the Tenth Circuit conflicts with the decisions of this Court, of other Courts of Appeals, and of the Supreme Court of Oklahoma which hold that there is no enforceable promise when the term, price and quantity are not specified.

In *Wilcox & Gibbs Sewing Machine Co. v. Ewing*, 141 U. S. 627, 635, 12 S. Ct. 94, 35 L. Ed. 882, this Court refused to enforce an instrument as a binding exclusive distributorship contract, holding that there was merely a principal-agent relation, terminable at will. The Court intimated that had a definite term been specified, the result would have been different. See also *Willard, Sutherland & Co. v. United States*, 262 U. S. 489, 43 S. Ct. 582, 67 L. Ed. 1086 (no quantity specified).

There are numerous cases from the Courts of Appeals to the effect that sale contracts which would be continuing in their nature are unenforceable for indefiniteness

where there is no term, price or quantity specified. For example, in *Red Wing Shoe Co.* v. *Shepherd Safety Shoe Corp.*, (7th Cir.), 164 F. 2d 415, 418, the contract purported to endure as long as sales made on account of Shepherd "amount to a yearly average of $35,000.00." The Court of Appeals deduced that this could be interpreted as a perpetual term among other interpretations, and held:

> "This contention is sufficient proof of the indefiniteness of the contract if it had no other vulnerable feature. 'It is not often that a promise will be interpreted as calling for perpetual performance'."

The court pointed out another reason for its refusal to enforce the contract:

> "* * * If a contract does not specifically fix prices it must provide a definite method for ascertaining them. (Citation omitted.) The contract involved does not provide such a method."

For a holding that the lack of a specified quantity will render a sales contract unenforceable, see the leading case of *Cold Blast Transp. Co.* v. *Kansas City Bolt and Nut Co.*, (8th Cir.), 114 F. 77, 80, where the Court held:

> "If it (the buyer) had refused to order and take them no action could have been maintained for its failure because no court could have determined what amount it was required to take. Nor can an action be better maintained against the plaintiff for its failure to deliver the articles which the defendant has ordered because the offer contains no measure of the quantity which the plaintiff was to deliver, and consequently no agreement on its part to deliver any whatever."

Also in point is the well known class of cases known as the "will, wish or want" cases, since they hold that an agreement without a specified quantity is unenforceable, even though the parties consciously attempted to provide for an indefinite quantity. The cases involving "requirements" contracts are not in point since there was no agreement, promise or representation on either side that the plaintiffs would take their requirements from Phillips.

Other cases holding that want of term, price or quantity renders an obligation unenforceable, and thus conflicting with the holding of the Court of Appeals are:

National Importing and Trading Co. v. Clark, (2d Cir.), 270 F. 54, 56-57, (price);

McArthur v. Rosenbaum Co. of Pittsburgh, (3d Cir.), 180 F. 2d 617, 619 (term);

Louisville Soap Co. v. Taylor, (6th Cir.), 279 F. 470, 479, cert. den. 259 U. S. 583, 42 S. Ct. 586, 66 L. Ed. 1075, (price);

Canadian Nat'l. Ry. Co. v. George M. Jones Co., (6th Cir.), 27 F. 2d 240, 242, (price);

Curtiss Candy Co. v. Silberman, (6th Cir.), 45 F. 2d 451, 452 (term, price, quantity, by reference to 68 F. Supp. 717, 722);

American Cotton Oil Co. v. Kirk, (7th Cir.), 68 F. 791, 792 (quantity);

Weston Paper Manufacturing Co. v. Downing Box Co., (7th Cir.), 293 F. 725, 727-728 (price).

Jordan v. *Buick Motor Co.*, (7th Cir.), 75 F. 2d 447, 449-450 (term, quantity);

Anderson & Brown Co. v. *Anderson*, (7th Cir.), 161 F. 2d 974, 977 (price);

A. Santaella & Co. v. *Otto F. Lange & Co.*, (8th Cir.), 155 F. 719, 722-723 (term, quantity);

Huffman v. *Paige-Detroit Motor Car Co.*, (8th Cir.), 262 F. 116, 117-118 (price, quantity);

Nebraska Aircraft Corp v. *Varney*, (8th Cir.), 282 F. 608, 610, (price);

E. I. Du Pont de Nemours & Co. v. *Claiborne-Reno Co.*, (8th Cir.), 64 F. 2d 224, 228, 233, cert. den. 390 U. S. 646, 52 S. Ct. 644, 76 L. Ed. 1295 (term, see the second appeal, 77 F. 2d 565, 568);

Terre Haute Brewing Co. v. *Dugan*, (8th Cir.), 102 F. 2d 425, 426 (term or quantity);

Meredith v. *John Deere Plow Co.*, (8th Cir.), 185 F. 2d 481 (term, quantity);

Maple Island Farm, Inc. v. *Bitterling*, (8th Cir.), 209 F. 2d 867, 878-879, cert. den. 348 U. S. 882, 75 S. Ct. 123, 99 L. Ed. 694, reh. den. 348 U. S. 921, 75 S. Ct. 290, 99 L. Ed. 722, (term);

Boeing Airplane Co. v. *NLRB*, (D. C. Cir.), 174 F. 2d 988 (term, see discussion in 193 F. 2d 470, 474).

There are other cases to the same effect.

Among the above cited cases are so-called "exclusive distributorship" contracts, which are especially in point. In those contracts the seller promises to sell and the buyer,

agreeing to the purported contract, proceeds to change his position in reliance upon the seller's promise, spending sums of money for such things as advertising, stores, displays, and other things calculated to build up a demand for the articles which he has arranged to buy. In such cases the agreements are uniformly held unenforceable where there is the lack of a specified term, price and quantity.

Such is also the rule in Oklahoma. A case which illustrates the conflict between the cases at bar and the Oklahoma rule is *Dunn* v. *Birmingham Stove & Range Co.*, 170 Okl. 452, 44 P. 2d 88, 89, in which the court, holding that an exclusive distributorship contract without an expressed duration was unenforceable, stated the rule as follows:

> "The general rule as to contracts of the nature here involved is that, where the contract itself provides no definite period of time it shall remain in force, the law presumes it shall last as long as both parties desire and terminate at the will of either party."

Other cases showing that the Court of Appeals directly conflicts with the Oklahoma Supreme Court are:

Rogers v. *White Sewing Machine Co.*, 59 Okl. 40, 157 P. 1044, 1045-1046;

Arkansas Valley Town & Land Co. v. *A. T. & S. F. Ry. Co.*, 49 Okl. 282, 151 P. 1028, 1032;

Foster v. *Atlas Life Insurance Co.*, 154 Okl. 30, 6 P. 2d 805, 808;

Forster-Davis Motor Co. v. *Slaterbeck*, 176 Okl. 395, 98 P. 2d 17, 19;
Barnsdall Refining Co. v. *Desmond*, 173 Okl. 177, 46 P. 2d 913, 915.

The above conflicts cannot be resolved by "implying" the essential terms of an agreement as the Tenth Circuit has attempted to do. It was not the intent of the parties that a perpetual obligation should be created to sell gas at a reasonable price for the life of production and in such quantities as desired by the plaintiffs. Neither Lewis nor any other agent of Phillips had any such intent. The plaintiffs could not have reasonably thought this to be the case, for they knew that there were written contracts to be signed and they could not assume anything as to the terms of these contracts without ascertaining them. If they had, they would have been found to provide for termination by either party. They could not have reasonably expected that Phillips would gratuitously obligate itself to supply gas perpetually at the will of the plaintiffs.

The Court of Appeals cites four Oklahoma cases in support of its holding that the agreements were definite[2]. These cases do not sustain the decision; therefore it did not follow state law.

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[2] *Harlow Pub. Co.* v. *Patrick*, 181 Okl. 83, 72 P. 2d 511; *Oklahoma Portland Cement Co* v. *Pollock*, 181 Okl. 266, 73 P. 2d 427; *Webb* v. *Moran*, 186 Okl. 140, 96 P. 2d 308; *Brown* v. *Bivings*, (Okl.), 277 P. 2d 671.

In the *Patrick case* there was no continuing obligation and further, the amount and time of performance were clearly specified in writing. The defendant was to pay $100.00 on December 1, 1929.

In the *Pollock* and *Webb cases* the term was somewhat unusual in each case but was clearly specified and was definite. In *Pollock* it was for the rest of plaintiff's natural life. In the *Webb case* it was until certain cotton could be sold at 10¢ per pound profit to the defendant. The *Brown case* apparently holds directly contrary to the principle for which the Court of Appeals cites it. In its opinion the Oklahoma court stressed the fact that no duration had been agreed on, referring to such fact three times. It then held the contract was void for uncertainty.

We respectfully and earnestly submit that a careful and analytical reading of the opinion of the Court of Appeals will reveal that its decisions in the cases at bar directly conflict with numerous state and federal decisions, and that it sets a precedent for creating arduous and perpetual obligations to which the parties never intended to become bound.

II.

If the decision of the Court of Appeals be distinguished on the basis of promissory estoppel, then the cases at bar stand for a novel, erroneous and far reaching extension of the promissory estoppel doctrine.

In the preceding proposition it was pointed out that the decision of the Court of Appeals is in conflict with cases from this Court, other circuits and Oklahoma. Admittedly these cases dealt with ordinary contracts and not with promissory estoppel. If it be said that the cases at bar are distinguishable from the cited cases by reason of being based on promissory estoppel then the holding of the Tenth Circuit assumes a most unusual aspect.

The decisions in the cases at bar are an unheard of extension of the doctrine of promissory estoppel. It is true that many courts have held that contracts may be formed by means of an estoppel in cases where there was a promise that would have been enforceable but for the absence of the technical elements of consideration, or a writing. *Porter* v. *Commissioner of Internal Revenue*, (2d Cir.), 60 F. 2d 673, 675, aff'd 288 U. S. 436, 53 S. Ct. 451, 77 L. Ed. 880.

We have been unable to find a single case in which promissory estoppel was used to impose a continuing obligation to sell goods on the basis of a promise or statement where there was no expression as to the term, price

and quantity of the alleged obligation. Nor do we find any cases involving other types of obligations where an indefinite and uncertain promise was enforced by estoppel.

The promissory estoppel situations require certainty for the same reasons as do ordinary promises. No reasoning or authority can be found to the contrary. In fact, even stricter rules should be applied to estoppels because of the ease with which they can be fabricated.

For example, in *Lacy* v. *Wozencraft*, 188 Okl. 19, 105 P. 2d 781, the only case remotely in point which was cited by the Court of Appeals for its estoppel theory, the usual requisites of a contract were present. In that case the promisee, relying on a promise to renew her lease at the same rental as before for three more years, made expenditures in reliance on such promise. The decision was in favor of the promisee, but the requirements of certainty were met: the term was three years and the rental was to be the same as before. There was a meeting of the minds, an offer and acceptance, and clearly the intention of both parties at the time of the oral transaction was that there would be a contract of lease between them, and the terms and conditions of it were understood.

In the cases at bar, there was no certainty, no intent on the part of Lewis for Phillips to be bound, and no bargain. Further, there was no reasonable reliance, since plaintiffs knew there was a form contract to be signed and Lewis made no representation as to its terms. The

mere fact that plaintiffs made expenditures has no bearing on the terms on which they reasonably relied. Buster, the Hitches, and eight others drilled wells without relying on a perpetual term (R. 100, 112, 119, 131). If these persons deemed it expedient to expend money relying only on a one-year supply of gas, then how can the court say that the fact of expenditures implies reliance on a perpetual term? In view of this it appears that the Court of Appeals has eliminated the element of reasonable reliance from the doctrine of promissory estoppel.

It is imperative that this holding of the Court of Appeals be reviewed because of its far reaching consequences affecting basic principles of contract law relied on by business men everywhere. Under the cases at bar any statement of intention to make a contract in the future may be enforced as an estoppel. Any oral obligation may be extended to a perpetual term by testimony that the promisee has changed his position in reliance on such a term, even if the promissor never made a promise for such a term and never would have done so.

Under the two cases at bar it is now unnecessary to prove the elements of a contract or to bring one's case within the rules pertaining to the enforcement of promises. It is necessary only to prove the making of a statement indicating the general intention to enter into a contract and the rest of the essential and material terms of the obligation may be implied, even though it is inconceivable

that the promissor would have agreed to such terms. An obligation may be imposed without the necessity for showing a reasonable reliance thereon.

This cannot be the correct law, for if statements indefinite and uncertain as to term, price and quantity cannot be relied upon by a party giving consideration of the usual type, then they cannot be reasonably relied on by one who changes his position in order to establish a promissory estoppel.

These considerations are far reaching in their effect on business and commerce, and if this Court refuses to review the decisions of the Court of Appeals, the law throughout the Tenth Circuit will be as follows:

Any party who is negotiating a sale contract and who manifests his intention to sell goods, not mentioning essential terms such as term, price and quantity, will be bound to a contract the terms of which are as favorable as possible to the adverse party. The promisee need only expend money and state that such expenditures were in reliance upon the promise and the additional terms of the contract will be implied. The price will be that price expected by the promisee. The quantity will be such quantity as he desires to take (although he obligates himself to take none) and the term will be perpetual, or during the life of the business of both parties.

There can be no preliminary negotiations. The entire contract must be made at one and the same time; other-

wise the buyer could change his position in reliance on the seller's avowed willingness to sell and write his own contract, merely by testifying that he relied on certain terms.

It will be necessary to expressly negate any undesirable term to avoid it, rather than following the accepted practice of assuming that one is not bound to a term unless he expressly agrees to the same. This is explicit in the opinion of the trial court where it was held that the term of the obligation was perpetual for the reason that Lewis had failed to say that the proposed contracts contained a termination clause (R. 34).

III.

Under the facts in these cases any alleged obligation of Phillips would be unenforceable under the applicable law of specific performance, and the decision of the Court of Appeals that such law of specific performance would not apply to an injunction suit conflicts with the decisions of this Court and of other Courts of Appeals.

(a) A holding that injunction against breach of an obligation is not equivalent to specific performance thereof was necessary to the decision by the Court of Appeals.

The lower court having found that Phillips had entered into "oral agreements", the judgments were attacked upon the grounds of want of mutuality of obligation and remedy. The Court of Appeals held that this defense lacked merit for the reason that it was a de-

fense only to actions for specific performance of agreements and these cases were not such. The Court of Appeals said:

> "Most of the cases cited in support of the contention were cases for specific performance. In Oklahoma, in order to be subject to enforcement by an action for specific performance a contract or agreement must be mutual in respect to obligations and remedy (citation omitted) and specific performance will not be decreed where an executory contract or agreement leaves it optional with one of the parties whether he will proceed with the contemplated enterprise (citations omitted) *but these were not actions for specific performance of the oral agreements.* They were actions to enjoin threatened refusal to discharge an obligation resting upon Phillips to furnish gas and the basis of the asserted relief was equitable estoppel." (Emphasis added.)

This quotation can mean one of two things. Either the fact that these cases involved promissory estoppel or the fact that they were injunction suits rather than specific performance had the effect of obviating the necessity for following settled Oklahoma contract law. If the former, then these cases are an anomaly in the law which is discussed under Proposition II above. If the distinguishing factor is the fact that the cases were brought as injunction suits, then the holding of the Court of Appeals must be that by bringing an action in the form of an injunction a plaintiff may evade the rules of contract law pertaining to specific performance of obligations.

That the Court of Appeals so held is further indicated by their rebuttal of Phillips' argument pertaining to the Statute of Frauds:

> "*But these were not actions for the enforcement of the oral agreements.* They were actions to restrain wrongful discontinuance of the furnishing of gas pursuant to the terms of the agreement." (Emphasis added.)

The two quotations above clearly indicate the principles adopted by the Court of Appeals and its intention to apply such erroneous principles in the future if this Court does not review the decisions.

In addition to the explicit statement by the Court of Appeals as to the principle to which they adhere, the facts and results of these cases are a square holding to the effect that injunction may be used to evade the law of specific performance. The Oklahoma law as to mutuality is clear and is recognized by the Court of Appeals. Were these actions for specific performance they must have been reversed for want of mutuality. The fact that they were instead affirmed indicates that this erroneous decision is a square holding and not a mere loose statement of principle.

(b) The above holding is in direct conflict with decisions of this Court and of other Courts of Appeals.

This Court and the courts of appeals for the circuits other than the Tenth Circuit hold that there is no dis-

tinction between an injunction against breach of an obligation and specific performance of an obligation and that the rules applicable to specific performance must be followed in suits for injunction against breach.

In *Joy v. City of St. Louis*, 138 U. S. 1, 47, 11 S. Ct. 243, 34 L. Ed. 843, this Court recognized the specific performance rule that where performance was perpetual and indefinite so that it would be impracticable for the Court to supervise the execution of the decree, the obligation would not be specifically performable. This Court felt it necessary to distinguish specific performance cases. This Court said, at page 46:

> "* * * The action of the circuit court was, in effect, to enforce the specific performance of the agreement. * * * The prayer for an injunction to restrain the Wabash Company and its receiver from refusing to permit the Colorado Company to use the right of way of the Wabash Company from the north line of the park to Eighteenth Street, is a prayer for all that is necessary to secure practically the specific performance of the agreement * * *."

This Court, 138 U. S. at pages 50-51, recognized that mutuality was necessary in this injunction suit as it was in specific performance, but found that there was no want of mutuality, that the contract could be practically supervised and affirmed the decree granting the injunction. These factors clearly show this Court's view conflicts with the cases at bar.

Since this case did not deny the injunctive relief sought, it is not unequivocally and fact for fact in conflict with the cases at bar from the Tenth Circuit. There are, however, numerous cases from the Second, Third, Fourth, Sixth, Eighth and Ninth Circuits which are directly conflicting with the cases at bar. For example, in the leading case of *Hutchinson Gas & Fuel Co.* v. *Wichita Natural Gas Co.*, (8th Cir.), 267 F. 35, 38, it was said:

> "An injunction against the breach of a contract is a negative decree of a specific performance thereof, and the general rule is that the power and duty of a court of equity to grant the former are governed by the same principles, rules, and practice as are its power and duty to grant the latter relief."

This case was one for injunction against breach of a natural gas purchase contract and the Court applied the specific performance rule that mutuality of remedy and obligation is essential, 267 F. at 39, holding that the decree dismissing the bill for injunction must be affirmed for the reason that there was no mutuality of remedy and obligation.

This decision squarely conflicts with the decisions of the Court of Appeals in the cases at bar.

The following cited injunction cases are also squarely conflicting with the Tenth Circuit, both on their facts and in principle, as expressed by the Courts of Appeals. The citation of each case will be followed by a citation to a page containing language stating that injunction against

breach is equivalent to specific performance; additional page references are citations to language showing that the particular court applied specific performance law in an injunction case. The application of specific performance rules in an injunction case is in effect a holding in conflict with the decision in the Tenth Crcuit.

Capetta v. *Atlantic Refining Co.*, (2d Cir.), 74 F. 2d 53, 55, cert. den. 294 U. S. 730, 55 S. Ct. 639, 79 L. Ed. 1260;

York Haven Water & Power Co. v. *York Haven Paper Co.*, (3d Cir.), 201 F. 270, 277-278, 278-279;

Simmons Co. v. *Crew*, (4th Cir.), 84 F. 2d 82, 86, 84-85, cert. den. 299 U. S. 569, 57 S. Ct. 32, 81 L. Ed. 419;

United Fuel Gas Co. v. *Swiss Oil Corporation*, (6th Cir.), 41 F. 2d 4, 7, 6-7, 7;

Shubert v. *Woodward*, (8th Cir.), 167 F. 47, 53, 55, 56, 57, 61;

Engemoen v. *Rea*, (8th Cir.), 26 F. 2d 576, 578, 578, 579, 579, cert. den. 278 U. S. 627, 49 S. Ct. 28, 23 L. Ed. 546;

General Petroleum Corporation of California v. *Beanblossom*, (9th Cir.), 47 F. 2d 826, 828, 828.

We find seven other cases to the same effect.

This conflict between circuits cannot be justified on the basis of state law, for the principle of the foregoing cases is enunciated by two Oklahoma decisions, *Kolachny* v. *Galbreath*, 26 Okl. 772, 110 P. 902, 906; *Warner* v. *Page*, 59 Okl. 259, 159 P. 264, 266.

This question should be reviewed. It would have decisive effects upon the substantive rights of litigants were the decision of the Court of Appeals allowed to stand. A plaintiff may bring his case within or without the law pertaining to specific performance by the simple expedient of suing for specific performance or for injunction against breach.

How may one rely upon the law of specific performance when it can be avoided by a plaintiff at will? It is certainly legitimate to ascertain whether a proposed obligation is to be specifically performable before entering into it. We find no case holding that all sale contracts are specifically performable at the option of the buyer, yet the *Buster* and *Hitch Land Company cases* are square holdings to that effect.

It is respectfully submitted, therefore, that these cases, in addition to being in direct conflict with the decisions of this Court and other circuits, have such a great potential, if they should be followed, for disrupting the law and customs of commerce, that such reason alone merits the exercise by this Court of its *certiorari* jurisdiction.

IV.

The decision of the Court of Appeals is in conflict with Rule 65(d).

Rule 65(d) of the Federal Rules of Civil Procedure provides in part:

"Every order granting an injunction * * * shall be specific in terms. * * *"

The judgments of the trial court enjoin Phillips "from disconnecting plaintiffs' gas line, connecting their water well * * * with defendant's producing gas well * * * located on said land; and from refusing or failing to permit the use and purchase by plaintiffs at a reasonable price during the continuance of such irrigation, from gas produced on said land, of such amount of natural gas as is reasonably necessary for such irrigation on said land" (R. 42, 252).

As an example of the vagueness of these judgments we call attention to the provision relating to price. What is meant by "a reasonable price" is ascertainable, but only by litigation. The purpose of the judgment is to determine the rights of the parties and not to present new and further questions of fact which can be resolved only by the intervention of judge or jury.

A party who is enjoined to sell goods at a "reasonable price" is in the position of having to bow to any demand of his vendee for the reason that he is under constant peril of contempt proceedings for violation of the injunction. He is unable to ascertain in advance what the trier of fact will determine a reasonable price to be.

This is illustrated in the cases at bar where the plaintiffs have assumed all through the cases (R. 73, 76, 80, 106) that they would pay the field price of 9.82¢ per

Mcf for the gas. This is probably not a reasonable price, for it further appears from the evidence that at such a price Phillips will lose money on the sale of natural gas to these plaintiffs (R. 139, 147), and that a public utility in the area charges nearly three times the field price (Pl. Ex. 1, R. 169, 68):

Although the opinion is silent as to this point and does not attempt to meet Phillips' argument pertaining to the violation of Rule 65(d), it is clear that the Tenth Circuit has held in effect that the above quoted judgment is consistent with Rule 65(d). Thus the decision is in conflict with the principle enunciated by the Court of Appeals for the Seventh Circuit in *Shannon* v. *Retail Clerks*, (7th Cir.), 128 F. 2d 553, 555, to the effect that Rule 65(d) is not merely directory but is mandatory and must be followed by the trial courts. Also conflicting in principle with the two cases at bar are:

Corica v. *Rugen*, (7th Cir.), 140 F. 2d 496, 499;

S. E. C. v. *Okin*, (2d Cir.), 139 F. 2d 87, 89;

Schwegmann Bros. v. *Hoffman-La Roche, Inc.*, (5th Cir.), 221 F. 2d 326, 328, cert. den. 350 U. S. 839, 76 S. Ct. 77, 100 L. Ed. 748.

Apart from the conflicts in principle between the Tenth Circuit and the cases cited above, it is of great importance that the Federal Rules of Civil Procedure should be interpreted uniformly. These judgments of the trial

court, as affirmed by the Court of Appeals are precedents which may be cited and followed throughout the country for the principle that Rule 65(d) may be evaded and ignored. This Court should further its purpose by reviewing those decisions which deviate from the proper interpretation of the Federal Rules.

CONCLUSION

It is respectfully submitted that a Writ of Certiorari should be granted and that the decisions of the Court of Appeals should be reversed with instructions to render judgments for Phillips.

Respectfully submitted.

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JUNE, 1957.

APPENDIX A

Opinion
(January 2, 1957)

William J. Zeman (Rayburn L. Foster, Harry D. Turner, R. M. Williams, and Cecil C. Hamilton were with him on the brief) for Appellant.

V. P. Crowe (Orlando Sweet, William J. Holloway, Jr., Tryon & Sweet, and Embry, Crowe, Tolbert, Boxley & Johnson were with him on the brief) for Appellees.

Before BRATTON, Chief Judge, and PICKETT and LEWIS, Circuit Judges.

BRATTON, Chief Judge.

These four cases—filed in the state court and seasonably removed to the United States court on the ground of diversity of citizenship with the requisite amount in controversy—present for determination questions relating to injunctive relief to prevent threatened disconnecting of certain deep water wells used for the irrigation of farm lands in Oklahoma from gas lines of a major producing oil and gas company. The cases are numbered 5309, 5310, 5311, and 5312, in this court. In Number 5309, Robert W. Buster and his wife were plaintiffs below; in Number 5310, H. C. Hitch, Jr., and wife, and John B. Gray and wife were plaintiffs; in Number 5311, Henry C. Hitch and wife were plaintiffs; and in Number 5312, The Hitch Land and Cattle Company, a corporation, Harry H. Hitch, and Bill Logsdon were plaintiffs. In all of the cases, Phillips Petroleum Company, a corporation, and A. M. Rippel, manager of the natural gas department of Phillips Petroleum Company were defendants. The defendant Rippel was a nominal party and no further reference will be made to him. The cases will be referred to as the Buster, the Hitch, Jr., the Hitch, Sr., and the Hitch Land Company cases, respectively; and the parties will be referred to as plaintiffs and Phillips, respectively.

Although the cases were consolidated for trial, the court made separate findings of fact and conclusions of law in each case. In the *Buster case*, the court made these findings of fact. Plaintiffs owned a tract of land in Texas County, Oklahoma, containing 160 acres. Phillips held oil and gas leases covering the land and had a producing gas well thereon, known as the Mayoe well.

Dale Lewis was the field superintendent of Phillips. In about December, 1952, Lewis represented, promised, and agreed with plaintiffs that if they completed the drilling and equipping of an irrigation well on such land, Phillips would provide natural gas produced from the Mayoe well in the amount reasonably necessary for the operation of the water well. In reliance upon such representation, promise, and agreement, and upon the custom, practice and policy of Phillips and other companies having producing gas wells in the vicinity of the land upon which the Mayoe well was located to permit the purchase and use at reasonable prices of gas for the operation of irrigation wells, plaintiffs subsequently completed their well. The completing and equipping of the well cost about $17,000, more than $10,000 of which was expended subsequent to and in reliance upon the representation, promise, and agreement made by Lewis for Phillips. Phillips had notice and knowledge of the expenditures made by plaintiffs in completing the drilling and equipping of the well. On or about January 15, 1953, Phillips installed the valve for the connection of the water well to the gas line of Phillips for the receipt of gas for the operation of the irrigation well; and from the time of such connection, Phillips had notice and knowledge of such use of gas. Natural gas produced on the land owned by the plaintiffs at a reasonable price was the only fuel the use of which would permit irrigation for agricultural purposes of such land with reasonable assurance of profit; and until about July, 1953, it was the general custom, practice, and policy of Phillips and other companies having producing gas wells in the vicinity of the land owned by plaintiffs to permit the purchase and use of natural gas at reasonable prices and in such amounts as were reasonably necessary for such irrigation operations. By letter dated July 23, 1953, Phillips advised plaintiffs that unless the connection between the irrigation well and the gas line from the Mayoe well was severed before September 1, 1953, Phillips would make the disconnection and would thereafter refuse to permit the purchase and use of gas produced from such well for the operation of the irrigation well. In the *Hitch Land Company case*, the court made these findings. Plaintiff The Hitch Land Company owned a tract of land in Texas County, containing 160 acres; plaintiff Harry H. Hitch owned a tract containing 320 acres; and plaintiff Logsdon was the tenant farming both tracts for agricultural purposes. Phillips held oil and gas leases covering such land and had

a producing gas well thereon, known as the Timmons well. In about January, 1953, Lewis represented, promised, and agreed with plaintiffs that if they undertook the drilling and equipping of an irrigation well on such land, Phillips would provide natural gas produced by the Timmons well in the amount reasonably necessary for the operation of such irrigation well. In reliance upon such representation, promise, and agreement, and in reliance upon the custom, practice, and policy of Phillips and other companies having producing gas wells in the vicinity of the lands owned by plaintiffs to permit the purchase and use of natural gas at reasonable prices for the operation of irrigation wells, plaintiffs drilled and equipped the irrigation well on such land at a cost of approximately $14,000 and made further expenditures for preparation of the land for irrigation and purchase of equipment for such purpose amounting to approximately $15,000. From and after about April, 1953, Phillips permitted plaintiffs to purchase natural gas from the Timmons well reasonably necessary to operate the water well used for irrigation purposes. In other material respects, the court made findings of fact substantially identical with those made in the *Buster case*. In the *Hitch, Jr., case*, the court made these findings of fact. Plaintiffs owned a tract of land in Texas County, containing 320 acres. Phillips held oil and gas leases covering the land and had a producing gas well thereon known as the Knott well. Until about July, 1953, it was the general custom, practice, and policy of Phillips and other companies having producing gas wells in the vicinity of the land owned by plaintiffs to permit the purchase and use of natural gas at reasonable prices and in such amounts as were reasonably necessary for irrigation operations from gas wells on irrigated lands. In reliance upon such custom, practice, and policy, plaintiffs drilled and equipped an irrigation well on their land at a cost of approximately $14,000 to $15,000, and made further expenditures for the equipment of such well of about $10,000 to $12,000, with further expenses in the preparation of the land for irrigation, thereby making a total investment of about $25,000. The irrigation well was completed in the spring of 1953, and from that time Phillips permitted plaintiffs to purchase and use gas from the Knott well to operate the irrigation well. In all other material respects, the court made findings of fact identical or substantially so with those made in the *Buster* and the *Hitch Land Company*

case, except that the court did not find that Phillips ever represented, promised, and agreed that if plaintiffs undertook the drilling and equipping of the well for irrigation purposes Phillips would provide for the operation of such well gas produced from the Knott well, or that Phillips took any part in effecting the connection of the irrigation well with the gas line of Phillips. In the *Hitch, Sr., case*, the court made these findings of fact. Plaintiffs owned a tract of land in Texas County, containing 640 acres. Phillips held oil and gas leases covering the land and had thereon a gas producing well, known as the Place well. Until about July, 1953, it was the general custom, practice, and policy of Phillips and other companies having producing gas wells in the vicinity of the land of plaintiffs to permit the purchase and use of natural gas at reasonable prices and in such amounts as were reasonably necessary for such irrigation purposes from gas wells on irrigated land. In reliance upon such custom, practice, and policy, plaintiffs drilled and equipped two irrigation wells on their land and made further expenditures for the preparation of the land for irrigation at a total outlay of about $45,000. From and after the completion of such wells in about the middle of 1951 and the fall of 1952, respectively, Phillips permitted plaintiffs to purchase and use natural gas from the Place well reasonably necessary to operate the two irrigation wells. In all other material respects, the findings of fact were substantially identical if not completely identical with those made in the *Buster case* and in the *Hitch Land Company case*, except that the court did not find that Phillips ever represented, promised, and agreed with plaintiffs that if, they undertook the drilling and equipping of the wells for irrigation purposes, Phillips would provide gas for such purpose from the Place well, or that Phillips participated in any manner in effecting the connection of the irrigation wells with the gas line of Phillips. The court made identical conclusions of law in the several cases. The court concluded as matters of law that Lewis had authority to make the representation, promise, and agreement; that by reason of its representation, promise, agreement, and conduct, Phillips was obligated to permit plaintiffs to purchase and use gas produced from the gas wells for the operation of the irrigation wells; that plaintiffs would suffer irreparable injury if the irrigation wells were disconnected from the gas lines; that Phillips was estopped to deny or repudiate its obligation to furnish gas for the operation of the irrigation wells;

that Phillips was estopped to assert the statute of frauds; and that injunctive relief should be granted. In each case, the court entered judgment enjoining Phillips from disconnecting the gas line connecting the well of plaintiffs from the gas line of Phillips and from failing or refusing to permit the purchase and use at a reasonable price and in a quantity reasonably necessary for the operation of the irrigation well owned by plaintiffs. 133 F. Supp. 594. Separate appeals were perfected but the several cases were submitted in this court on a single record.

The judgments are challenged upon the ground that Lewis lacked authority to enter into the oral agreements in respect to the furnishing of natural gas for the operation of the irrigation wells. In the *Buster* and the *Hitch Land Company cases*, the court found that oral agreements were entered into, but in the *Hitch, Jr.*, and the *Hitch, Sr., cases*, the court did not make such findings and the record is completely barren of evidence indicating that in those cases agreements of that kind were entered into. Therefore, this contention and all other contentions subsequently considered concerning the oral agreements relate only to the *Buster* and the *Hitch Land Company cases*. The headquarters of Phillips are located in Bartlesville, Oklahoma. Lewis had been in the employ of the company for more than ten years. He resided at the Hansford plant of the company, held the position of area superintendent, was in charge of the company offices in Texas County, and had field men under his supervision. The Sherman and Harsford gathering systems were within his area. They included the gas fields of the company in Texas County. And it was the general custom and practice for farmers and owners of land in the area to deal with Lewis as the agent and representative of Phillips. It is the law in Oklahoma that apparent authority exists when the principal, by statement or conduct, either places the agent in position in which he appears with reasonable certainty to be acting for the principal, or without interference suffers the agent to assume such position so that third persons are justified in believing that he is acting within his authority. *Rosser-Moon Furniture Co. v. Oklahoma State Bank*, 192 Okl. 169, 135 P. 2d 336; *Knapp v. Ottinger*, 206 Okl. 113, 240 P. 2d 1083. Having held Lewis out to the public as its agent with apparent authority to act for it in respect to ordinary local matters arising within the area of which he was superintendent, Phillips cannot be heard to challenge his authority to enter into

the oral agreements even though the instructions given Lewis were to refer to the home office of the company for action all applications or requests for gas with which to operate irrigation wells, unless plaintiffs had notice or knowledge of such instructions. *Guardian Foundation* v. *Turner*, 191 Okl. 313, 129 P. 2d 592. And the court did not find that at the time the agreements were entered into plaintiffs had any such notice or knowledge.

The judgments are challenged upon the further ground that the oral agreements were at most mere agreements to make future contracts without any meeting of the minds of the parties. The evidence presented sharp conflicts in respect to the substance of the oral agreements. But the court resolved the conflicts. In each instance, the court found in substance that by the oral agreement the parties intended to reach and did reach a present understanding that if the well was drilled or the drilling completed and water was found gas would be supplied for the operation of the well. The court found in effect that by entering into the oral agreements the parties made present commitments and assumed immediate obligations rather than merely agreeing to enter into a future contract. The findings of the court in that respect are supported by substantial evidence and are not clearly erroneous. Therefore they must stand on appeal. Accordingly, there is no sustainable factual basis in the record for the contention that by the oral agreements the parties merely agreed to enter into effectual contracts later. . .

The judgments are attacked upon the additional ground that the oral agreements were unenforceable for indefiniteness and uncertainty. Harmonizing in full measure with the general principle of law obtaining elsewhere, it is the rule in Oklahoma that the destruction of contracts or agreements for vagueness and uncertainty is disfavored; and that if a contract or agreement is sufficiently definite and certain in its totality that the intention of the contracting parties can be ascertained with reasonable certainty, it is not void for indefiniteness and uncertainty even though it fails to enter into all of the details respecting the subject matter, especially where there has been partial performance. *Harlow Publishing Co.* v. *Patrick*, 181 Okl. 83, 72 P. 2d 511; *Oklahoma Portland Cement Co.* v. *Pollock*, 181 Okl. 266, 73 P. 2d 427; *Webb* v. *Moran*, 186 Okl. 140, 96 P. 2d 308; *Brown* v. *Bivings*, ___ Okl. ___, 277 P. 2d 671. The oral agreements each related only to the furnishing

of natural gas for the operation of the water well located on the land of plaintiffs. The quantity of gas to be furnished was the amount reasonably necessary for the operation of the well during the irrigation season. And the gas was to be furnished from the line of Phillips on the land of plaintiffs. These constituent elements were implicit or implied in each agreement. And viewed in the light of them, the agreements were sufficiently definite to enable the court to fix a reasonably exact meaning of its terms. Therefore, the agreements were not fatally infirm for indefiniteness and uncertainty.

Another ground of attack upon the judgments is that the oral agreements lacked mutuality of obligation. The channel of the argument is that there was no agreement in respect to the term or duration of the agreements; that there was no agreement respecting the extent or length of time plaintiffs would irrigate their lands; that there was no agreement concerning the volume of gas plaintiffs would take; that there was no agreement that plaintiffs would not change to some other type of fuel; that they could take or not take gas at their own whim or caprice; and that in the event they should cease to take gas, Phillips would be without recourse of remedy. Most of the cases cited in support of the contention were cases for specific performance. In Oklahoma, in order to be subject to enforcement by an action for specific performance, a contract or agreement must be mutual in respect to obligations and remedy. *Thompson* v. *Giddings*, ___ Okl. ___, 276 P. 2d 229. And specific performance will not be decreed where an executory contract or agreement leaves it optional with one of the parties whether he will proceed with the contemplated enterprise. *Superior Oil & Gas Co.* v. *Mehlin*, 25 Okl. 809, 108 P. 545; *Sohio Petroleum Co.* v. *Brannan*, 205 Okl. 1, 235 P. 2d 279. But these were not actions for specific performance of the oral agreements. They were actions to enjoin threatened refusal to discharge an obligation resting upon Phillips to furnish gas, and the basis of the asserted relief was equitable estoppel. The oral agreements for the furnishing of gas for the operation of the water wells having been entered into with the mutual intent and purpose that plaintiffs would act in reliance thereon, plaintiffs having acted in such reliance by making substantial expenditures in the drilling or the completing of the drilling of the wells and in preparing the land for irrigation, and plain-

tiffs being in reasonably certain danger of suffering irreparable injuries for which there would be no adequate remedy at law if the furnishing of gas were discontinued, equity finds support in the law of Oklahoma for intervening and restraining the threatened discontinuance of the furnishing of gas. *Lacy* v. *Wozencraft*, 188 Okl. 19, 105 P. 2d 781; *Holland* v. *Ross*, 189 Okl. 428, 117 P. 2d 798.

The remaining attack upon the judgments predicated upon asserted invalidity of the oral agreements is that such agreements were void under the statute of frauds. The statute of frauds of Oklahoma provides among other things that an agreement which by its terms is not to be performed within one year from the making thereof shall be invalid unless the same, or some note or memorandum thereof, be in writing and subscribed by the party to be charged, or by his agent. 15 O. S. 1951 § 136. But these were not actions for the enforcement of the oral agreements. They were actions to restrain wrongful discontinuance of the furnishing of gas pursuant to the terms of the agreements. And having entered into the agreements with the mutual intent and purpose that plaintiffs would act in reliance thereon, plaintiffs having acted in that manner, and it being reasonably certain that plaintiffs will sustain irreparable injuries for which they do not have any adequate remedy at law if the furnishing of gas is discontinued, Phillips is estopped to invoke the statute of frauds. *Lacy* v. *Wozencraft*, *supra*.

The judgments in the *Hitch, Jr.*, and the *Hitch, Sr.*, cases are assailed upon the ground that the court erred in holding that by reason of custom, practice, and policy, Phillips was obligated to furnish gas for the operation of the irrigation wells. As previously stated, the court found in each of these cases that until July, 1953, it was the general custom, practice, and policy of Phillips and other companies having producing gas wells in the vicinity of the land owned by plaintiffs to permit the purchase and use of gas at reasonable prices and in amounts reasonably necessary for irrigation operations from gas wells on irrigated lands. Evidence was adduced tending to show that Skelly Oil Company furnished gas for the operation of six irrigation wells, and there was evidence that several farmers used gas for the operation of their irrigation wells. But the evidence was general and did not extend into details respecting the terms or conditions upon which such gas was sup-

plied, either by Skelly or other companies. Excluding the cases involved here, Phillips in only eight instances furnished to farmers gas for the operation of irrigation wells. In each of those instances, the furnishing of the gas was covered by a written contract which was explicit in respect to quantity, measurement, delivery, price, payment, indemnity, force *majeure*, and assignment. And each contract expressly reserved to either party the right to terminate the contract at the expiration of one year from the date thereof or on any anniversary date thereafter by giving to the other party thirty days notice in writing of an intention to do so, after which each party should be released from all further liability thereunder. In no instance did Phillips assume a continuing obligation to furnish gas indefinitely with no right of termination reserved unto itself. In order to have pertinence or be effective to establish an obligation or duty on the part of Phillips to furnish gas to plaintiffs, custom, practice, or policy must be predicated upon facts and circumstances fairly comparable to those presented here. And in the absence of evidence tending to establish the existence of a custom, practice, or policy arising out of facts and circumstances fairly similar in general aspects to those presented here, we fail to find any basis for the conclusion that custom, practice, or policy, enjoined upon Phillips the asserted obligation to furnish gas to plaintiffs for the operation of their irrigation wells.

Finally, the Legislature of Oklahoma, at its session in 1955, passed an act relating to natural gas and the use thereof on the premises from which it is produced to pump to the surface water to be used for irrigation on such premises, and for other purposes. 52 O. S. 1955, Supp. § 248, *et seq.* The act provides among other things, that every person owning or operating any well from which natural gas is produced, sold, or used off the premises on which the well is located, shall upon request, make gas available to the person engaged in agricultural activities upon such premises in sufficient quantities for the operation of irrigation pumps thereon. If the act were valid, perhaps it would be effective to require Phillips to furnish to plaintiffs gas for the operaton of their irrigation wells. But in a recently decided case, it was held that the act contravenes due process of law and therefore is invalid. *Phillips Petroleum Co. v. Corporation Commission of Oklahoma.* Okl. P.2d . Accordingly the act lends no aid to plaintiffs.

The judgments in the *Buster* and the *Hitch Land Company cases*, respectively, are severally AFFIRMED; and the judgments in the *Hitch, Jr.*, and the *Hitch, Sr., cases*, respectively, are severally REVERSED and the causes are REMANDED with directions to dismiss the actions.

LEWIS, concurring

I concur unqualifiedly in the reversal of the judgments in the *Hitch, Jr.*, and *Hitch, Sr., cases*, and concur in the affirmance of the judgments in the *Buster* and the *Hitch Land Company cases* because I cannot say that the finding of the trial court holding Phillips' promise to furnish gas to be without limitation as to time is clearly erroneous. However, I believe the record would support a finding that Phillips' promise was limited to the supplying of gas in accordance with the actual contract submitted to Buster and signed by him but subsequently rejected by Phillips. I would prefer such a finding and a consequent limitation upon the relief granted.

APPENDIX B

Judgment, Case No. 5309

First Day, January Term, Wednesday, January 2nd, 1957.

Before Honorable Sam G. Bratton, Chief Judge, and Honorable John C. Pickett and Honorable David T. Lewis, Circuit Judges.

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Oklahoma and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby affirmed.

Judgment, Case No. 5312

First Day, January Term, Wednesday, January 2nd, 1957.

Before Honorable Sam G. Bratton, Chief Judge, and Honorable John C. Pickett and Honorable David T. Lewis, Circuit Judges.

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Oklahoma and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby affirmed.

APPENDIX C

Order denying appellant's petition for rehearing

Second Day, March Term, Tuesday, March 5th, 1957.

Before Honorable Sam G. Bratton, Chief Judge, and Honorable John C. Pickett and Honorable David T. Lewis, Circuit Judges.

These causes came on to be heard on the petition of appellant for a rehearing herein and were submitted to the court.

On consideration whereof, it is ordered by the court that the said petition be and the same is hereby denied.

Office - Supreme Court, U.S.
FILED
JUN 28 1957
JOHN T. FEY, Clerk

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1956

No. ~~1056~~ 102

Phillips Petroleum Company, a corporation,
Petitioner,

versus

Mayoe Porter Buster and The Hitch Land and Cattle Company, a corporation, Harry M. Hitch and Bill Logsdon,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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June, 1957.

Litterback Typesetting Co., 13 So. Walker, Oklahoma City, Ph. FO 8-8750

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In the
Supreme Court of the United States
OCTOBER TERM, 1956

No. 1056

PHILLIPS PETROLEUM COMPANY, a corporation,
Petitioner,

VERSUS

MAYOE PORTER BUSTER and THE HITCH LAND AND CATTLE COMPANY, a corporation, HARRY M. HITCH and BILL LOGSDON,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 23-35) is reported at 133 F. Supp. 594. The opinion of the Court of Appeals and the concurring opinion are reported at 241 F.2d 178.

JURISDICTION

The jurisdictional requisites are adequately stated in the petition.

QUESTIONS PRESENTED

1. Whether, under Oklahoma law, equitable relief is proper against threatened disconnection of natural gas to pump deep irrigation water wells on the facts concurred in by both lower courts, where petitioner represented and agreed that gas from its gas wells on land owned or farmed by respondents would be provided by sale to pump irrigation water wells on such land, and where respondents in reliance thereon known to petitioner, spent substantial sums and commenced such irrigation operations.

2. Whether decrees enjoining petitioner from disconnecting gas lines to specified irrigation wells, and from refusing to permit the use and purchase of such gas reasonably necessary for irrigation on described land from specified gas wells thereon at a reasonable price, are sufficiently specific in terms and reasonable in detail to comply with Rule 65, Federal Rules of Civil Procedure.

STATEMENT

Respondents brought two suits in the Oklahoma courts to enjoin petitioner from disconnecting natural gas used to pump deep water wells irrigating lands owned or farmed by them. On diversity grounds, petitioner removed the cases to the District Court, which granted injunctive relief after a consolidated trial. The Court of Appeals reviewed portions of the findings which were questioned, and affirmed under Oklahoma law.

Both lower courts considered two additional cases in the consolidated trial and appeal, but review is not sought of the judgments in those cases which reversed injunc-

tions granted by the District Court, and no further reference to them is made.

The petition here seeks review of the two judgments of the Court of Appeals sustaining equitable relief in cases there styled *Phillips Petroleum Company* v. *Mayoe Porter Buster* (hereinafter the *Buster* case), and *Phillips Petroleum Company* v. *The Hitch Land and Cattle Company, Harry M. Hitch, and Bill Logsdon* (hereinafter the *Hitch Land Company* case).

The facts in which both lower courts concurred follow. Petitioner has producing gas wells, under oil and gas lease rights, on each of the two sections of farm land in Texas County, Oklahoma, involved. Respondents own separate tracts in these sections, except respondent Logsdon, who farms one tract as a tenant (R. 36, 246). In recent years severe drouth plaguing this vicinity of the Oklahoma Panhandle has made irrigation necessary for continued agricultural use of the land with reasonable assurance of profit. Deep water wells with about 380 and 390 foot depths are the source of water for irrigation. The gas produced from under the land has served as the only fuel whose reasonable cost permits pumping, with reasonable assurance of profit, to raise water for irrigation from these deep wells, since the cost of other fuels greatly exceeds that of the indigenous gas (R. 38, 248-249).

Under such circumstances, it became the general custom and policy before 1953 in this vicinity for gas producing companies, including petitioner, to permit the purchase of gas from their gas wells to operate these deep water wells (R. 39, 249). In about January of 1953, representa-

tives for respondents in the *Hitch Land Company* case contacted petitioner's field superintendent, Dale Lewis, about buying gas from the gas well on their land for a projected irrigation well. Lewis represented and agreed that if respondents drilled and equipped their irrigation well, petitioner would provide gas needed for its pumping—arrangements which Lewis's authority and apparent authority included (R. 246-247).

These respondents in the *Hitch Land Company* case then drilled and equipped their irrigation well to about a 360-foot depth for about $14,000.00 and invested about $15,000.00 more in preparation of the land and purchase of equipment—all with petitioner's knowledge of such reliance on availability of its gas. Petitioner's agents and employees made the connection for its gas line with respondents' line to receive the gas, and its use for irrigation after about April 9, 1953, was known to petitioner (R. 247-248). Less than 2% of this gas well's 1953 production of 92,000,000 cubic feet was used in the irrigation operations (R. 249).

Similar findings generally were made in the *Buster* case, with these variations. Respondents there contacted petitioner's field superintendent Lewis in about December, 1952, concerning gas for an irrigation well which they were drilling. Lewis represented and agreed that if they completed the drilling and equipping of their well, petitioner would provide gas reasonably needed for its pumping. Of $17,000.00 invested, more than $10,000.00 for completing and equipping the well at about a 390-foot depth was spent after Lewis's representations, and in reliance on them known to petitioner (R. 37-38). Petitioner's agents

and employees installed the valve for the connection with respondents' line, and their use of the gas for irrigation after about January 15, 1953, was known to petitioner. Here also less than 2% of the gas was used for irrigation, from a well whose production was about 106,000,000 cubic feet in 1953 (R. 38-39).

On about July 23, 1953, petitioner wrote respondents in both of the instant cases that unless the gas connections for their irrigation wells were removed by them before September 1, 1953, petitioner would disconnect the lines itself. Petitioner maintained this position threatening disconnection until trial (R. 39, 249-250), and appears to assert this same right to the present.

These findings were made by the District Court largely on oral testimony, some of which presented sharp conflicts. The trial judge held that respondents were entitled to relief under principles of estoppel by Oklahoma law, being threatened with irreparable injury. The portions of the findings questioned were sustained by the Court of Appeals, and it affirmed on the same ground. One member of the Court in a concurring opinion indicated that the record would support a finding and relief limited in time, which he would prefer.

ARGUMENT

The judgments below are correct. While the cases turn on unique facts, under the findings concurred in by both lower courts, the law of Oklahoma clearly entitles respondents to equitable relief.

All the technical objections argued by petitioner as Reasons I, II, and III for granting the writ overlook the equitable ground for relief based on estoppel where respondents made substantial investments in reliance on petitioner's representations, with its knowledge. Petitioner's claim of indefiniteness in its representations ignores the substance of the findings. The lower courts correctly rejected this objection under the Oklahoma rule strongly disfavoring destruction of obligations for indefiniteness, especially where reliance has been placed on them. The argument that specific performance was granted without mutuality of obligation and remedy mistakes the nature of the relief. Furthermore, even if such an objection is relevant, respondents' performance and circumstances which insure that they must use such gas, dispose of the point.

Reason IV, relating to compliance with Rule 65 in the specificity of the injunctions, is untenable. The decrees are sufficiently specific and describe the acts sought to be restrained in reasonable detail. The point involves no conflict of decision or important federal question.

These diversity cases were properly decided under state law by courts of special competence in its application. Asserted conflicts with the law of other jurisdictions furnish no basis for review. No reason for granting the writ as stated by Rule 19 of this Court is present, and no other ground for review is involved. Hence, this plainly equitable determination of private rights, under unusual circumstances and local law, provides no occasion for granting the writ.

1. The decision below is correct under Oklahoma law and involves no question appropriate for review. These

cases reaching it solely on diversity, the Court of Appeals properly turned to the law of Oklahoma. 28 U.S.C. 1652; *Erie Railroad Co.* v. *Tompkins*, 304 U.S. 64. It clearly stated the basis for its decisio under the state law as follows:

> "* * * But these were not actions for specific performance of the oral agreements. They were actions to enjoin threatened refusal to discharge an obligation resting upon Phillips to furnish gas, and the basis of the asserted relief was equitable estoppel. The oral agreements for the furnishing of gas for the operation of the water wells having been entered into with the mutual intent and purpose that plaintiffs would act in reliance thereon, plaintiffs having acted in such reliance by making substantial expenditures in the drilling or the completing of the drilling of the wells and in preparing the land for irrigation, and plaintiffs being in reasonably certain danger of suffering irreparable injuries for which there would be no adequate remedy at law if the furnishing of gas were discontinued, equity finds support in the law of Oklahoma for intervening and restraining the threatened discontinuance of the furnishing of gas. *Lacy* v. *Wozencraft*, 188 Okl. 19, 105 P.2d 781; *Holland* v. *Ross*, 189 Okl. 428, 117 P.2d 798." (Pet. App. A VII-VIII; 241 F.2d 178, 184)

These facts as summarized by the opinion stand as the concurrent findings of both lower courts, which are rarely reexamined here. *Allen* v. *Trust Co.*, 326 U.S. 630; *United States* v. *O'Donnell*, 303 U.S. 501; *Virginian Ry. Co.* v. *System Federation*, 300 U.S. 515; *Page* v. *Arkansas Natural Gas Corp.*, 286 U.S. 269. They clearly bring the instant cases within the principle in *Lacy* v. *Wozencraft*, 188 Okla. 19, 105 P.2d 781, and Oklahoma law generally.

In the *Lacy* case, the Oklahoma Court recognized estoppel as a proper defense in a forcible entry and detainer action. The Court pointed to proof that plaintiff had orally promised defendant to execute a three-year lease extending a tenancy; that plaintiff intended that the promise be acted upon; that the promise was acted upon by defendant, to her detriment, without protest or warning by plaintiff (which included several thousand dollars of investment in merchandise and remodeling); and that such circumstances brought the case within estoppel principles. *Strahm* v. *Board of Trustees of the Benevolent & Protective Order, etc.*, 203 Okla. 635, 636, 225 P.2d 159, 161. (dictum)

Each of these elements stands out in the instant cases. The court below reasoned carefully from them to a just result. Its opinion applied an even-handed justice, and the effort to disturb it is not appealing.

2. We turn now to petitioner's technical objections, urged in its four reasons for granting the writ. These began to emerge after petitioner decided to cut loose from its informal course of dealing and to stand on ceremony.

(a). Reason I for granting the writ argues that the Court of Appeals erroneously held that a unilateral promise may be enforced as a continuing contract of sale when term, price and quantity are unspecified.

Such an interpretation of the opinion is unwarranted. First, the argument overlooks the nature of the instant cases, which are grounded upon estoppel after performance in reliance upon petitioner's representations. Where performance has occurred, the objection that an obligation is uncertain comes too late and its destruction on this ground

is strongly disfavored. *Webb* v. *Moran*, 186 Okla. 140, 96 P.2d 308; *Oklahoma Portland Cement Co.* v. *Pollock*, 181 Okla. 266, 73 P.2d 427; *Harlow Publishing Co.* v. *Patrick*, 181 Okla. 83, 72 P.2d 511. Moreover, in conformity with the state practice, inferences reasonable under the circumstances were made as to the source, quantity, term and price of the gas. The men involved were acting informally and speedily, and directing their attention to the guaranty of gas, leaving out of account details which common sense supplied. Judicial responsiveness to the practical realities led to common sense inferences and findings. These are ignored by petitioner's argument. The contention lacks substance.

The Oklahoma authorities on the point cited at pages 17 and 18 of the petition may be put aside. In contrast to them, the instant cases present this background appropriate for inferences made as to the substance of the representations made and relied upon. Where the substance of such an obligation to supply gas is clear, injunctive relief is granted. See *Zenia Real-Estate Co.* v. *Macy*, 147 Ind. 568, 47 N.E. 147. The courts below were correct in making the inferences and rejecting the claim of indefiniteness.

(b). In Reason II for granting the writ, petitioner reads the opinion below as a novel, erroneous and far-reaching extension of promissory estoppel. Nothing new is presented in authority or in argument which mainly goes over the same ground—that petitioner's representations were uncertain.

It is urged that Lewis did not intend for petitioner to be bound. The argument looks at the wrong man. It is what

respondents were led to believe and do, not what Lewis may have intended, that matters. The findings pointing to reliance by respondents on Lewis's representations with petitioner's knowledge focus properly.

Petitioner's alarm over the scope of the opinion is unconvincing. It decides the instant cases against a background of unique circumstances. It reaches no farther than the area clearly staked out by Oklahoma decisions. And indeed, a contrary result would not fit into the equitable pattern of the state law.

(c). In Reason III for granting the writ, petitioner contends that the Court of Appeals erroneously held that the instant cases were not actions for specific performance, and improperly disregarded the requisites of mutuality of remedy and obligation.

The Court of Appeals correctly pointed out that these were not actions for specific performance of wholly executory obligations and that respondents had given performance (Pet. App. A VII-VIII, 241 F.2d 178, 184). The findings are that irrigation being vital to respondents, they invested about $25,000.00 in the *Hitch Land Company* case and about $17,000.00 in the *Buster* case in drilling wells and preparations; that petitioner's gas is the only fuel whose cost permits irrigation with reasonable assurance of profit; and that its use was begun and continued for several months before petitioner changed its ground (R. 37-38, 247-248). Respondents have performed. They have gone beyond the point of no return.

Petitioner relies on two Oklahoma cases in support of this portion of its argument, *Kolachny* v. *Galbreath*, 26

Okla. 772, 110 Pac. 902; *Warner* v. *Page*, 59 Okla. 259, 159 Pac. 264. In both suits to assert rights under oil and gas leases, at the time of suit plaintiff had not performed drilling operations and had the right to elect not to do so. Relief was denied for lack of mutuality of remedy. In both, the syllabi of the opinions clearly indicate that if plaintiffs had performed or placed themselves in a position where they might be compelled to perform, the result would have been different. And in *Pucini* v. *Bumgarner*, 71 Okla. 105, 175 Pac. 537, relief was granted against interference with rights under the lease, where by agreement the filing of suit itself removed plaintiff's option not to perform. *Cf. McCullough* v. *Smith*, 243 Fed. 823, 834-835 (8th Cir.) A fortiori, where respondents here have drilled their wells and commenced use of gas, the objection on mutuality of remedy is out of place.

Even where specific performance is sought, the concern of the chancellor on mutuality of remedy is for reasonable assurance that the person seeking relief will perform himself. The Court may be satisfied as here that the plaintiff's strong economic interest in going forward, after substantial investment, guarantees his performance. *Plastray Corporation* v. *Cole*, 324 Mich. 433, 443-444, 37 N.W.2d 162, 166; *Temple Enterprises, Inc.* v. *Combs*, 164 Ore. 133, 155, 100 P.2d 613, 621-622 (dictum); Restatement, Contracts, § 375, comment *b*, 684 (1932); 5 Williston, Contracts, § 1440, 4022-4023 (rev. ed. 1936). Moreover, where defendant's continued performance is conditioned on plaintiff's going forward, the built-in guaranty suffices. *Great Lakes & St. Lawrence Transportation Co.* v. *Scranton Coal Co.*, 239 Fed. 603, 609 (7th Cir.); *Elk Refining Coal Co.* v. *Falling Rock*

Cannel Coal Co., 92 W. Va. 479, 486, 115 S.E. 431, 434. The earnest of respondents' performance is ample.

As to mutuality of obligation, on this score the court is simply determining whether there is sufficient consideration to support petitioner's obligation. *Adalex Laboratories* v. *Krawitz*, 270 P.2d 346, 349-350 (Okla., 1954); 1 Williston, Contracts, § 141, 504-505 (rev. ed. 1936). Such consideration is found in respondents' reliance and detriment in drilling their wells and preparing for irrigation. 15 O.S. 1951, § 106; *Clemons* v. *Hampton*, 191 Okla. 693, 132 P.2d 919. And such independent consideration would support petitioner's obligation to furnish gas, even if respondents had an option to abandon its use. *Adalex Laboratories* v. *Krawitz*, *supra*.

(d). In Reason IV for granting the writ the injunctions are questioned, petitioner urging that they are not specific in terms as required by Rule 65, Federal Rules of Civil Procedure.

Rule 65(d) provides in pertinent part;

> "(d) FORM AND SCOPE OF INJUNCTION OR RESTRAINING ORDER. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; * * *."

The injunctions entered by the District Court in the instant cases are identical, with the exception of variations in describing the gas line, water well, gas well and

irrigated land involved in each (R. 41-42, 252). Both decrees restrained petitioner, its officers, agents, servants and employees from disconnecting respondents' gas line connecting their water well, irrigating the described tract in the described sections, with petitioner's named producing gas well on the tract. Both decrees further restrained the same parties

> "from refusing or failing to permit the use and purchase by plaintiffs at a reasonable price, during the continuance of such irrigation, from gas produced on said land of such amount of natural gas as is reasonably necessary for such irrigation on said land." (R. 42, 252).

Petitioner argues in general terms concerning vagueness of the injunction, referring specifically only to the statement on price. The decrees are specific in terms and framed in reasonable detail. Specific water wells, gas lines, gas wells and tracts of irrigated land are identified. As to the term on reasonable price, such provision defining the legal consequence of the use of gas is proper and the guide of reasonable price is sufficient, correctly not foreclosing practicable adjustment on this supplemental matter by the parties or an exercise of the court's continuing jurisdiction. *Cf. San Diego County* v. *California Water & Telephone Co.*, 30 Cal.2d 817, 837, 186 P.2d 124, 133. The parties clearly know what acts are restrained, and the determinations made on their legal relations on these points. The injunctions meet the obligations of Rule 65.

The authorities cited by petitioner on the contention are inapposite, in no way suggesting any reason for

exercise of this Court's jurisdiction. There is no conflict with decisions of this Court or other courts of appeals, nor any question which should be settled here.

The cases cited by petitioner under I(b), as to the conflicts of decisions rule, have no application here because none of them dealt with a case, where, as here, it would be inequitable or unjust, because of a promise made by one party to the other, intending reliance thereon, and where the other party does rely thereon to his detriment, to permit repudiation. The cited cases involved suits for damages for breach of alleged contracts, or for specific performance of indefinite contracts, and did not, as here, involve estoppel.

The basis of the courts' opinions below was estoppel, which was in accordance with general law, and was supported by Oklahoma decisions, applied by judges long familiar with Oklahoma law; and therefore carrying special force. *MacGregor* v. *State Mutual Life Assurance Co.*, 315 U.S. 280, 281; *Hillsborough* v. *Township of Cromwell*, 326 U.S. 620, 630; *Steele* v. *General Mills*, 329 U.S. 433, 439; *Huddleston* v. *Dwyer*, 322 U.S. 232, 237. Conflict of decisions of courts of appeal as ground for granting certiorari, where federal law is not involved, afford no basis for review here since *Erie Railroad Co.* v. *Tompkins*, 304 U.S. 64 and *Ruhlin* v. *New York Life Ins. Co.*, 304 U.S. 202.

As to federal law, there is no substance to the only point related to it, and no question calling for this Court's attention. No reason for review stated by Rule 19 of this Court is present, and no other appropriate basis for it is involved.

CONCLUSION

For the above reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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